

1 PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

2 Name Young Howard A.
 3 (Last) (First) (Initial) **ORIGINAL**
 4 Prisoner Number F-44590 **FILED**
 5 Institutional Address P.O. Box 8800 JUL 10 2008
 6 Concord, CA. 94521-8800
 7 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

8 Mr. Howard Allen Young)
 9 (Enter the full name of plaintiff in this action.))
 10 vs.)
 11 Warden Dereal Adams)
 12 Concord State Prison)
 13)
 14 (Enter the full name of respondent(s) or jailor in this action))
 15)

Case No. CV-06-00114 J.F.
 (To be provided by the clerk of court)

PETITION FOR A WRIT
 OF HABEAS CORPUS

16 Read Comments Carefully Before Filling In

17 When and Where to File

18 You should file in the Northern District if you were convicted and sentenced in one of these
 19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
 20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
 21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
 22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
 24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
 25 District Court for the district in which the state court that convicted and sentenced you is located. If
 26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
 27 your petition will likely be transferred to the district court for the district that includes the institution
 28 where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 Santa Clara County Superior Court San Jose

15 Court Location

16 (b) Case number, if known CC 454838

17 (c) Date and terms of sentence Sept 21, 2006

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes No

20 Where?

21 Name of Institution: Corcoran State Prison

22 Address: P.O. Box 8800, Corcoran, CA 93212-8800

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Commercial Burglary - P.C. 459

27 Grand Theft - P.C. 484

1 3. Did you have any of the following?

2 Arraignment: Yes No _____

3 Preliminary Hearing: Yes No _____

4 Motion to Suppress: Yes No _____

5 4. How did you plead?

6 Guilty _____ Not Guilty Nolo Contendere _____

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have?

9 Jury Judge alone _____ Judge alone on a transcript _____

10 6. Did you testify at your trial? Yes No _____

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes No _____

13 (b) Preliminary hearing Yes _____ No

14 (c) Time of plea Yes No _____

15 (d) Trial Yes No _____

16 (e) Sentencing Yes No _____

17 (f) Appeal Yes No _____

18 (g) Other post-conviction proceeding Yes _____ No

19 8. Did you appeal your conviction? Yes No _____

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes No _____

22 Year: 2008 Result: DENIED _____

23 Supreme Court of California Yes No _____

24 Year: 2008 Result: DENIED _____

25 Any other court Yes _____ No

26 Year: _____ Result: _____

28 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes No

2 (c) Was there an opinion? Yes No

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes No

5 If you did, give the name of the court and the result:

6 _____
7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes No

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: U.S. District Court-Northern District

19 Type of Proceeding: Civil Complaint # CV-06-00114 J.F.

20 Grounds raised (Be brief but specific):

21 a. Violations of the FCRA § 1681 et seq, the RFPAs § 3401 et seq and § 7160 et seq

22 b. 4th Amendment - illegal search and seizure

23 c. Injunctive Relief, Removal, Temporary/Permanent Restraining Order

24 d. 14 Amendment - Due Process and Equal Protection

25 Result: Pending Date of Result: _____

26 II. Name of Court: California Supreme Court

27 Type of Proceeding: Petition for Review

28 Grounds raised (Be brief but specific):

1 a. Due Process - EQUAL Protection - U.S. Constitution
 2 b. Illegal Search and Seizure U.S. Constitution
 3 c. Statute of Limitations
 4 d. Federal Question Jurisdiction - Removal

5 Result: DENIED - Lack of Jurisdiction Date of Result: 2-25-08

6 III. Name of Court: California Supreme Court

7 Type of Proceeding: Habeas Corpus

8 Grounds raised (Be brief but specific):

9 a. U.S. Constitution - DUE PROCESS - EQUAL Protection
 10 b. U.S. Constitution - Illegal Search and Seizure
 11 c. U.S. Constitution - INEFFECTIVE ASSISTANCE OF COUNSEL
 12 d. U.S. Constitution - Substantive Identification

13 Result: DENIED Date of Result: 3-12-2008

14 IV. Name of Court: California Supreme Court

15 Type of Proceeding: Habeas Corpus

16 Grounds raised (Be brief but specific):

17 a. Violations of the FCPA §1681 et seq, the (C) RPPA §7460 and §3401 et seq
 18 b. U.S. Constitution - Speedy Trial Rights - DUE PROCESS
 19 c. Illegal Use of Prior Conviction - P.C. 667(b)(i)
 20 d. Denial of Substantive Rights - Preliminary Examination

21 Result: DENIED Date of Result: 3-12-2008

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes No

24 Name and location of court: U.S. District Court - Northern District - San Jose
 25 Case # 06-00114-J.F.

26 B. GROUNDS FOR RELIEF

27 State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened?
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 a. _____
2 b. _____
3 c. _____
4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: California Supreme Court

7 Type of Proceeding: Petition for Review

8 Grounds raised (Be brief but specific):

9 a. Unconstitutional Admission of Evidence
10 b. Confrontation Clause of the Sixth Amendment
11 c. Trial Court Abused Discretion - Impeachment - Prior Convictions
12 d. Unconstitutionality of Cal Crim 375 - Proof Beyond a Reasonable Doubt

13 Result: Denied Date of Result: June 25, 2008

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____
18 b. _____
19 c. _____
20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No _____

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: U.S. Constitution & State Law - Speedy Trial/Preliminary
6 Hearing Violations - PC 859b - Due Process

7 Supporting Facts: Petitioner did not waive the 60 day requirement regarding
8 time to be brought to a preliminary hearing, yet the court violated
9 Petitioner's due process and speedy trial/Preliminary hearing rights

10
11 Claim Two: Petitioner's credit report(s), financial record(s) and private
12 records were obtained in violation of the F.C.R.A §1681 et seq., the

13 Supporting Facts: Right to Financial Privacy Act § 3401 et seq., the California
14 Right to Financial Privacy Act § 7460 et seq. and the Federal and
15 State Constitutions, both with and without legal process.

16 Petitioner requests that all previously raised issues in the (2)

17 Claim Three: Petitions for Review, Habeas Corpus case numbers

18 S156104, S157535 and S164021, including but not limited to

19 Supporting Facts: Suggestive identification, the Las Vegas search of Petitioner's
20 residence, the search and seizure of Petitioner's luggage from United
21 Airlines checked baggage system, and the statute of limitation violations
22 All be heard by this court, and relief be granted by this court.

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 All Grounds have been RAISED in the HIGHEST STATE COURT!

26 PLEASE SEE ALL EXHIBITS - Attached, and in U.S. District Court -
27 Northern District - San Jose Division - Case # 06-00114 J.F. - A-E, 1-23

28 (Please see Motion for Finding and Recommendation in case # 06-00114 J.F.)

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
 3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
 4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: 4th Amendment - Illegal Search and Seizure

6 Petitioner was denied the opportunity to fully and fairly litigate the 4th Amendment claims.

7 Supporting Facts: City of Palo Alto, California issued out of state search warrants
 8 for petitioner's consumer credit reports, financial records and personal records
 9 from TransUnion in Chicago, Illinois, Experian in Allen Texas, EQuifax in Atlanta Georgia,
 10 T-Mobile in Washington, ARC in Virginia and Hertz in Oklahoma

11 Claim Two: 14 Amendment - Due Process and Equal Protection Violations

12 P.L. 1000-1001.90 - California Diversion Statutes and P.L. 8050 (California Community- Based Treatment Act)

13 Supporting Facts: Petitioner was accepted into and successfully completed the
 14 bootcamp style, pretrial diversion program - Santa Clara County Regimented
 15 Correction Program (RCP) after arrest pending court proceedings, but petitioner
 16 was not released per state laws or as other RCP participants were released

17 Claim Three: In Effective Assistance of Counsel

18 (Failure to investigate, to present alibi evidence or raise constitutional violations)

19 Supporting Facts: All counsels failed to raised any of THESE issues
 20 petitioner has raised. All counsels failed to investigate petitioner's
 21 alibi evidence regarding plaintiff's being near Sacramento purchasing a
 22 sweeper truck which could be verified by E-mail and T-Mobile phone records.

23 If any of these grounds was not previously presented to any other court, state briefly which
 24 grounds were not presented and why:

25 (Please note: The R.C.P. Certificates showing Petitioner's successful
 26 completion ARE in U.S. District Court - Northern District - San Jose
 27 Division CASE # 06-00114 J.F.)

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: 6th Amendment and 14th Amendment

RIGHT TO CONFRONTATION AND DUE PROCESS VIOLATIONS - ILLEGAL ENHANCEMENT

Supporting FACTS (state briefly without citing cases or law): Petitioner was sentenced based

ON A 667(b-i) PRIOR CONVICTION ENHANCEMENT, WHICH WAS PRIOR TO THE
THESE STRIKES LAW, WHICH WAS NOT A CONDITION OF THE PLEA AGREEMENT PETITIONER
TOOK FOR THE P.C. 207-KIDNAPING CHARGE, PETITIONER WAS NOT GIVEN BIFURCATION
OF THE PRIOR CONVICTIONS AT THE TIME OF TESTIFYING AT TRIAL, AND PETITIONER
WAS NOT ALLOWED THE FULL RIGHT TO A JURY TRIAL REGARDING THE PAST OF
THOSE PRIOR CONVICTIONS

B. Ground two: 4th Amendment

ILLEGAL SEARCH AND SEIZURE

Supporting FACTS (state briefly without citing cases or law): Petitioner's luggage was seized

FROM UNITED AIRLINES CHECKED BAGGAGE SYSTEM, PETITIONER'S CELL PHONE WAS
SEARCHED AND SEIZED, BOTH WITHOUT A VALID SEARCH WARRANT. PETITIONER'S
LAS VEGAS RESIDENCE WAS BASED ON THE CELLPHONE NUMBER SEARCH AND ON
DULESS AND COULD EXIGENT CIRCUMSTANCES.

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
 3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
 4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: The Admission of Four Uncharged Offenses Pursuant To
 6 Evidence Code § 1101(b) violated Petitioner's Federal and State Constitutional Rights
 7 Supporting Facts: The Prosecution introduced evidence of four out-of-county
 8 burglaries - Evidence of the four Uncharged Offenses were Inadmissible
 9 Pursuant to Evidence Code § 1101 - Evidence Under § 1101 Deprived Petitioner
 10 of His Federal and State Constitutional Due Process Right To A Fair Trial

11 Claim Two: Admission of Hearsay Evidence of Three Additional Uncharged
 12 Burglaries violated Petitioner's Federal and State Constitutional Rights to Confrontation - Fair Trial

13 Supporting Facts: Det. BOVIA's testimony regarding three additional burglaries
 14 constituted HEARSAY, as there was no indication that he had any personal
 15 knowledge of any of these three "suspected" burglaries, and no witness
 16 was called to testify as to any of these three "suspected" burglaries

17 Claim Three: Trial Court Abused Its Discretion by Allowing the Prosecutor
 18 To Impair Petitioner with All four of Petitioner's Prior Felony Convictions

19 Supporting Facts: The trial court denied Petitioner his Constitutional Right
 20 to a fair trial - CalCrim 325 violated Petitioner's Constitutional Right to
 21 be convicted only by proof beyond a reasonable doubt.

22 (SEE Petition for Review in EXHIBIT)

23 If any of these grounds was not previously presented to any other court, state briefly which
 24 grounds were not presented and why:

25 (Please note: Petitioner is unable to submit all necessary Exhibits due to having
 26 all legal documents taken and subsequently lost, misplaced or destroyed by CDC-
 27 Coronado State Prison - SEE EXHIBIT D- Ninth Circuit docket sheet dated 6/6/07)

Additional Citations

U.S. v Strother (D.C. Cir 1978) 578 F.2d 397, 399

Syrian Band of Indians v Ronche (S.D. Cal 1992) 788 F.Supp. 1498

In re Castiglione (E.D. Cal 1984) 587 F.Supp. 1210

People v Pina, 72 Cal.App.3d 509, 35, 39, 140 Cal. Rptr. 270, 272 (1977)

Allen v Calvo (D.Or 1993) 832 F.Supp. 301

Sotomayor v U.S. (E.D. Cal 2003) 278 F.Supp.2d 1151

In re Gren (C.A. 9(Ca) 1980) 633 F.2d 825

Zurich v Stanford Daily (U.S. Ca 1978) 98 S.Ct 1970

15 U.S.C. § 1681 et seq - Fair Credit Reporting Act

12 U.S.C. § 3401 et seq - Right to Financial Privacy Act

California Government Code § 7460 et seq - California Right to Financial Privacy Act

Hunt v U.S. SEC (N.D. Tex 1981) 520 F.Supp 580

Anderson v La Junta State Bank (C.A. 10(Colo) 1997) 115 F.3d 756

People v Blair (Cal. 1979) 159 Cal Rptr 818, 25 Cal. 3d 640

Additional Citations

Strickland v Washington (1984) 466 U.S. 668

Crawford v Washington (2004) 541 U.S. 36

Conningham v California (2007) 549 U.S. ____

Williams v Taylor (2000) 528 U.S. 362

Brennan v Greene (1998) 23 U.S. 571

Dowling v United States (1989) 493 U.S. 342, 352

Davis v Washington (2006) 126 S.Ct. 2266

In re Winship (1970) 397 U.S. 358, 364

Estelle v McGuire (1991) 502 U.S. 62, 72

Sandstrom v Montana (1979) 442 U.S. 510, 521

Patterson v New York (1977) 432 U.S. 197, 215

Donnelly v De Christoforo (1974) 416 U.S. 637, 643

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Galloway v Suffolk County Correctional Facility (E.D. NY 2002) 232 F.Supp.2d 4

5 In re Britton C (Cal APP. 6 D.671999) 90 Cal Rptr 2d 737

6 Winsett v McGinnis, D.C. 443 F.Supp; 617 F.2d 996

7 Do you have an attorney for this petition? Yes No ✓

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on July 7, 2008
14 Date

Allegro

Signature of Petitioner

20 (Rev. 6/02)

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E X H I B I T

A

UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

Richard W. Wiking
Clerk

General Court Number
415.522.2000

May 7, 2008

CASE NUMBER: CV 06-00114 MJJ
CASE TITLE: HOWARD YOUNG-v-TRANS UNION

REASSIGNMENT ORDER

GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED that this case is reassigned to the SAN JOSE division.

Honorable JEREMY FOGEL for all further proceedings.

Counsel are instructed that all future filings shall bear the initials JF immediately after the case number.

ALL MATTERS PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED.

Date: 5/7/08

FOR THE EXECUTIVE COMMITTEE:

Richard W. Wiking
Clerk

NEW CASE FILE CLERK:

Copies to: Courtroom Deputies
Log Book Noted

Special Projects
Entered in Computer 5/7/08 MAB

CASE SYSTEMS ADMINISTRATOR:
Copies to: All Counsel

Transferor CSA

UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

Richard W. Wiekling
Clerk

General Court Number
415.522.2000

May 6, 2008

CASE NUMBER: **CV 06-00114 MJJ**
CASE TITLE: **HOWARD YOUNG-v- TRANS UNION**
DATE MANDATE FILED: 5/2/08

TO COUNSEL OF RECORD:

The mandate of the United States Court of Appeals for the Ninth Circuit has been filed
in the above captioned case.

Sincerely,

RICHARD W. WIEKING, Clerk

Sheila Rash
by: Sheila Rash
Case Systems Administrator

Distribution: CIVIL - Counsel of Record
CRIMINAL - Counsel of Record
U.S. Marshal (Copy of Mandate)
U.S. Probation Office

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United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 04/30/2008 at 2:17:06 PM PDT and filed on 04/30/2008

Case Name: Young v. Trans Union, et al

Case Number: 06-16051

Document(s): Document(s)

Docket Text:

MANDATE ISSUED.(EL, SRT and MSB)

The following document(s) are associated with this transaction:

Document Description: Mandate Letter

Original Filename: /opt/ACECF/live/forms/theresab_0616051_6517951_MandateForm_108.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=04/30/2008] [FileNumber=6517951-0]

[2a6761dc94aed0c88200ac6d0bdb0d3d426abc954128b53b8a037fff282216aa2a56aa658f817650d0cb3f]

Recipients:

- USDC, San Francisco
- Young, Howard

Notice will be mailed to:

USDC, San Francisco
Northern District of California (San Francisco)
P.O. Box 36060
San Francisco, CA 94102-0000

Young, Howard
COSP - 3A CORCORAN STATE PRISON
Level 3A Facility
P.O. Box 3461
Corcoran, CA 93212-3461

The following information is for the use of court personnel:

DOCKET ENTRY ID: 6517951

RELIEF(S) DOCKETED:

DOCKET PART(S) ADDED: 5602794

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

APR 30 2008

MOLLY C. DWYER, CLERK OF COURT
U.S. COURT OF APPEALS

HOWARD YOUNG,

Plaintiff - Appellant

v.

TRANS UNION; EXPERIAN;
EQUIFAX; VISA USA,

Defendants - Appellees

No. 06-16051

D.C. No. CV-06-00114-MJJ

MANDATE

35

The judgment of this Court, entered 12/10/2007, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

/s/

By: Theresa Benitez
Deputy Clerk

NOT FOR PUBLICATION

DEC 10 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

HOWARD YOUNG,

No. 06-16051

Plaintiff - Appellant,

D.C. No. CV-06-00114-MJJ

v.

MEMORANDUM*

TRANS UNION; et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding

Submitted July 9, 2007**

Before: LEAVY, THOMAS, and BERZON, Circuit Judges.

Howard Young appeals pro se from the district court's judgment dismissing his action against numerous defendants arising out of his ongoing criminal prosecution in California state court. We review de novo a dismissal pursuant to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1915. *Ramirez v. Galaza*, 334 F.3d 850, 853-54 (9th Cir. 2003). This Court may raise the issue of *Younger* abstention at any point during the appellate process. *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000). We vacate the district court's judgment and remand with instructions to abstain from exercising jurisdiction over the action for damages and to stay the action until the state criminal proceeding has been completed.

The district court improperly treated Young's Fair Credit Reporting Act and state and federal Right to Financial Privacy Act claims as brought under 42 U.S.C. § 1983 and then dismissed them as barred under *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), because Young's complaint did not purport to allege those causes of action under section 1983. *See Bogovich v. Sandoval*, 189 F.3d 999, 1001 (9th Cir. 1999) ("courts should not undertake to infer in one cause of action when a complaint clearly states a claim under a different cause of action.").

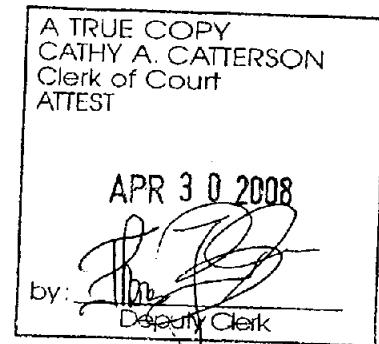
In light of the ongoing state court criminal proceedings, the district court was required under *Younger v. Harris*, 401 U.S. 37 (1971), to abstain from exercising jurisdiction over Young's statutory claims for money damages and to stay the action until the state court proceeding was completed. *See Gilbertson v. Albright*, 381 F.3d 965, 981 (9th Cir. 2004) (en banc) ("when damages are sought and *Younger* principles apply, it makes sense for the federal court to refrain from

exercising jurisdiction temporarily by staying its hand until such time as the state proceeding is no longer pending.”).

Accordingly, we vacate the district court’s judgment and remand for the limited purpose of allowing the district court to enter an order staying Young’s action for damages until the state proceeding has been completed.

Appellant shall bear the costs on appeal.

VACATED and REMANDED.



United States District Court ^{ROB MAY 29 PM 1:49}
FOR THE NORTHERN DISTRICT OF CALIFORNIA ^{RICHARD W. WICKING}
SAN JOSE DIVISION <sup>CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA S.J.</sup>

Mr. Howard Young

Plaintiff,

D.C. No. CV-06-00114-JF

v

TransUnion, et al.,

Defendants

PLAINTIFF'S

AMENDED Motion for
SUMMARY JUDGMENT
DEMAND FOR JURY TRIAL

TO THE HONORABLE JEREMY FOGEL;
(HEARING REQUESTED to be on July 11, 2008)

Plaintiff hereby moves this court, as soon as can be heard, with this
Amended Motion for Summary Judgment.

Summary judgment is appropriate where there is no genuine issue as to
any material fact.

"Further, a court must not weigh the evidence, make credibility determinations or
determine the truth of the matter at the summary judgment stage, but may only
determine whether there is a genuine issue for trial; (citations omitted)

(recognizing that on a motion for summary judgment, a district court is entitled
to neither assess the weight of the conflicting evidence nor to make
credibility determinations)" See *Centocci v. Experian Information Solutions, Inc.*, (D. Ariz 2006) 431 F.Supp.2d 1002 (Also see *Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 206 F.3d 1322, 1328
(9th Cir 2000))

"Whether the City unlawfully obtained the credit report is a legal question that the court may resolve on summary judgment."

SEE PAPPAS v City of Calumet City (N.D. Ill. 1998) 9 F.Supp.2d 943

"Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). See Chester v Peiris (S.D.Ind. 2003)

260 F. SUPP. 2d 711

Plaintiff hereby moves this court for summary judgment against defendants TransUnion, et al., based on the pleadings, admissions on file, affidavits, and all other documents enclosed in the record of this case, for violations of plaintiff's rights pursuant to 15 U.S.C. § 1681 et seq., 12 U.S.C. § 3401 et seq., California Government Code § 7460 et seq., U.S. Constitutional Rights, California Constitutional Rights, and plaintiff's federal and/or state rights to privacy (See Exhibits A-E, 1-23, and attached)

The FCRA § 1681(a)(4) reads; "There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."

"In passing this subchapter, Congress intended to prevent unreasonable or careless invasion of consumer privacy"

SEE IN RE TRW (E.D. Mich. 1978) 460 F.Supp 1007

"This subchapter regulates conduct of consumer reporting agencies and users of consumer reports." See *Kibben v Pickle*, Wash. App. 1982, 653 P.2d 1338, 33 Wash. App. 387

Plaintiff contends that Trans Union, Experian and Equifax are (see Exhibit A) "consumer reporting agencies", and City of Palo Alto, Magistrate Charles Hayden, Officer Dave Pohr, City of Menlo Park, FBI/REACT, Officer Alex Bouja, County of Santa Clara, D.A. James Sibley and D.A. Thomas Flaherty, and California Attorney General's Office, D.A.G. Bud Frank are "users" of plaintiff's "consumer credit report(s)", pursuant to the FCRA 15 U.S.C. §1681 et seq.

Plaintiff contends that the search warrants for plaintiff's consumer credit report(s) issued by City of Palo Alto Magistrate Charles Hayden upon affidavit of Officer Dave Pohr, within Santa Clara County, to Trans Union located in Chicago Illinois, Experian located in Allen Texas and Equifax in Atlanta Georgia were not "the order of a court having jurisdiction to issue such an order" pursuant to §1681b(a)(1) and were therefore invalid and/or void on their face, unreasonable, in violation of §1681 et seq., the 4th (4th) Amendment, and obtained for an impermissible purpose in violation of §1681 et seq.

".... execution of search warrant beyond county officer's jurisdiction violated the Fourth Amendment and was actionable under §1983."

The search warrants can only be operative in the territory in respect of which the issuing officer is clothed with judicial authority. See *U.S. v Strother*, (affirmed on other grounds) (Circuit Court of Appeals, other grounds) (CA 9(CA) 2002) (D.C. Cir 1978) 578 F.2d 397, 399 and *Bishop Paiute Tribe v County of Inyo* (CA 9(CA) 2002) 275 F.3d 893, citing *Sycuan Band of Indians v Roache* (S.D.Ca 1992) 788 F.Supp. 1498

County of Santa Clara, D.A. Thomas Flaherty, in the JUN 02 2005
 OPPOSITION TO MOTION TO TRAVERSE, QUASH AND TO SUPPRESS EVIDENCE,
 the JUN 29 2005 OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES
 TECUM, and the JUN 21 2005 OPPOSITION TO MOTION TO SUPPRESS EVIDENCE
 (P.C. 1538.5) AND SET ASIDE THE INFORMATION (SEE EXHIBIT B-attached)
 states the following;

A) Plaintiff "Has no Privacy Interest In Records Held by A
 THIRD PARTY", "He has no standing to object to those
 warrants", "A person has no expectation of privacy in information
 that is provided to a third party" (citing *United States v Miller* (1976)
 425 U.S. 435, "following Proposition 8, the Admissibility of evidence
 in California Criminal trials depends on the federal rules of exclusion"
 citing *In re Lance W.* (1985) 37 Cal 3d 873, 873, and "federal law
 does not provide a remedy for a challenged search of the third
 party records that are voluntarily conveyed to the businesses and
 exposed to their employees in the ordinary course of business"
 citing *People v Person*, 169 Cal App. 3d 319 (citing *Miller*, supra 401 U.S. at 442).

Plaintiff contends that plaintiff's consumer credit report(s) were disclosed,
 obtained and used in violation of the FCRA § 1681 et seq.

Plaintiff contends that plaintiff has a privacy interest, standing and an
 expectation of privacy, (reasonable, objective and/or subjective), and that
 there are remedies to challenge the search warrants available, including
 by means of the federal rules of exclusion and the state rules of exclusion.

"The government's general assertion that Castiglione has no standing to bring this motion is clearly erroneous. First of all, the cases cited by the government are all cases which precede that passage of the Right to Financial Privacy Act. Secondly, sections 3416, 3417 and 3418 of Title 12 specifically place jurisdiction in district courts generally, and prescribe judicial remedies that are available to the person affected, including injunctive relief. "See *In re Castiglione*, (E.D.Cal.1984) 587 F.Supp. 1210 (underline added)

Plaintiff also contends that Santa Clara County D.A. Thomas Flathay's general assertion that plaintiff has no standing is erroneous, particularly by citing "Miller" which preceded the Right to Financial Privacy Act and the California Right to Financial Privacy Act which are almost identical in prescribing judicial remedies that are available to the person affected, including injunctive relief. As such, plaintiff contends that plaintiff has standing to challenge the search warrants validity used to obtain plaintiff's consumer credit reports, financial and other records.

Plaintiff contends that the out-of-state/out-of-jurisdiction search warrants and their execution was invalid, in violation of plaintiff's rights pursuant to §1681 et seq., §3401 et seq., §7460 et seq., and the U.S. and State Constitutions.

"If the sheriff acts outside this territorial jurisdiction, the sheriff has no law enforcement powers other than those that any private citizen would have. *People v Pina*, 72 Cal. APP. 3d SUPP. 35, 39, 140 Cal. Rptr. 270, 272 (1977). "See *Sycuan Band of Mission Indians v Roache*, *supra*.

"When a consumer brings an action for violation of the disclosure provisions of the FCRA, the Act's purpose of protecting consumer confidentiality is implicated. In that respect, such cases are akin to invasion of privacy cases under state law-cases where the plaintiff alleges that the defendant unlawfully invaded the plaintiff's privacy by obtaining information deemed confidential."

See *Myers v. Bennett Law Offices*, (C.A. 9(Nev) 2001) 238 F.3d 1068

Plaintiff contends that defendants City of Palo Alto - Magistrate Charles Hayden and Office Dave Flohe, City of Menlo Park and FBI/REACT Office Alex Bouja, County of Santa Clara - D.A. James Sibley and D.A. Thomas Flattery and California Attorney General's Office - D.A.B. Bud Frank "unlawfully invaded the plaintiff's privacy by obtaining information deemed confidential".

See *Myers v. Bennett Law Offices*, *supra*.

"When introducing the Fair Credit Reporting Bill in the Senate, Senator Proxmire stated that the bill would require;

"... that credit bureaus have in effect procedures for guaranteeing the confidentiality of the information they collect and that no such information be released to noncreditors such as governmental investigative agencies without the express consent of the person involved." 114 Cong. Rec. 24902 (1968). See *Belslow v. Credit Bureau of Prescott*, 392 F.Supp 1356, 1360, n.4 (D. Ariz. 1975)" See *Hansen v. Morgan* (C.A. 9(Idaho) 1978) 582 F.2d 1214

Plaintiff did not give the "express consent" nor was plaintiff notified of the release of plaintiff's credit report(s) to governmental/investigative agencies.

Plaintiff contends that City of Palo Alto - Magistrate Charles Hayden and Officer Dave Flohr obtained and used plaintiff's consumer credit report(s) negligently, willfully and/or in reckless disregard for plaintiff's rights to privacy and/or pursuant to §1681 et seq., and for the impermissible purpose of a criminal investigation and prosecution, based on the affidavit of City of Palo Alto - Officer Dave Flohr.

"It is uncontested that defendant requested the credit report in connection with his criminal investigation of Allen. Neither a criminal investigation nor a state grand jury subpoena constitute a permissible purpose to furnish a consumer report under §1681b."

SEE *Allen v Calvo* (D.Or. 1993) 832 F.Supp. 301 - motion granted on other grounds

Plaintiff contends that City of Palo Alto - Magistrate Charles Hayden exceeded his jurisdiction, acted as a rubberstamp, was not neutral nor detached, and did not make a reasoned determination in issuing the search warrants for plaintiff's consumer credit report(s) from Trans Union located in Chicago Illinois, Experian located in Allen Texas and Equifax located in Atlanta Georgia, including but not limited to; the overbroad scope of the search warrants, i.e., requesting plaintiff's entire file, the out-of-state/out-of-jurisdiction locations, and the "Non-Disclosure" stipulations of the search warrants.

Plaintiff contends that the City of Palo Alto search warrants used to obtain plaintiff's consumer credit reports are not "the order of a court having jurisdiction" pursuant to §1681 b(n)(1), and they violated plaintiff's II Fourth Amendment rights, along with plaintiff's rights to privacy and should be suppressed.

"The Court also believes that such characterization would be inconsistent with the function Congress intended a court order to serve under the Act, i.e., to ensure that a consumer's privacy is not unduly impinged upon by disclosure of his credit file to third parties including governmental investigative agencies, which are not seeking the information for credit-related, business purposes.

In order to provide this protection for the consumer, it is necessary for a court to consider the purposes for which disclosure is sought and to make a reasoned determination as to whether granting the requesting party access to the consumer's file for such purposes would violate the consumer's rights."

See *In re Grand Jury Subpoena Dicestersum* (N.D.G.A. 1980) 498 F.Supp. 1174

"(B) Law Governing Search Warrants

The defendants next argue the ~~warrant~~ was valid as a state warrant and, thus, the evidence seized would be admissible in a subsequent federal prosecution. The warrant clearly was not valid under Federal Rule of Criminal Procedure 41(a). This Rule allows a state court to issue a warrant for an alleged violation of federal law. However, the warrant may only be issued upon the request of a federal law enforcement officer or attorney. *United States v Radlick*, 581 F.2d 225, 228 (9th Cir 1978). The October 1991 search warrants were not issued at the request of any federal officer or attorney. And, therefore, the search warrants were not valid federal search warrants."

See *Sycuan Band of Mission Indians v Roache*, supra.

Plaintiff contends that the search warrants were invalid, in violation of the IV (4th) Amendment, the FCRA § 1681 et seq., federal and state privacy laws, and this court has the authority to accord a remedy under the exclusionary rule being that suppression of the out-of-state search warrants would serve the remedial purpose of deterring future unlawful police conduct thereby promoting the Fourth Amendment guarantee against unreasonable searches and seizures.

"According A Remedy under the exclusionary Rule requires the court to evaluate whether the remedy fashioned serves the remedial purpose of deterring future unlawful police conduct thereby promoting the Fourth Amendment guarantee against unreasonable searches and seizures."

SEE U.S. v SDI Future Health, Inc., (D.Nev 2007) 491 F.Supp.2d 975

Plaintiff contends that City of Palo Alto - Magistrate Charles Hayden did not disclose the purpose for obtaining plaintiff's consumer credit report(s) to TransUnion, Experian or Equifax, as the affidavit of Officer Dave Flohr was not attached to the search warrants, and was thereby requesting and/or obtaining plaintiff's consumer credit report(s) for City of Palo Alto Officer Dave Flohr to be used in a criminal investigation and prosecution, in violation of the FCRA § 1681 et seq. SEE Allen v Calvo, supra, motion granted on other grounds.

Plaintiff contends that City of Palo Alto - Magistrate Charles Hayden and Dave Flohr obtained plaintiff's consumer credit report(s) under false pretenses, pursuant to, and in violation of § 1681g, willfully and in reckless disregard for plaintiff's rights.

City of Palo Alto search warrant affidavits do not purport to seek plaintiff's consumer credit report(s) for the impermissible purpose of obtaining plaintiff's T-Mobile/phone account information. Yet, (City of Palo Alto using plaintiff's consumer credit report(s) (TransUnion) subsequently obtained plaintiff's T-Mobile phone account information.

SEE T-Mobile search warrant affidavit in Exhibits

"User who purports to seek consumer report for permissible purpose, while secretly seeking report for impermissible purpose, is subject to liability under Fair Credit Reporting Act (FCRA) for obtaining information under false pretenses." See Allen v Calvo, supra, motion granted on other grounds.

"("USER" includes the ultimate destination of report as well as person who acquired report for another.)"

City of Palo Alto Officer Dave Flote showed plaintiff's consumer credit report(s) to Menlo Park and FBI/REACT Officer Alex Bouja who then used plaintiff's consumer credit report regarding plaintiff's Visa credit card account to contact Visa and subsequently obtain plaintiff's financial record from Visa without legal process, in violation of the FCRA § 1681 et seq and the RFPD § 3401 et seq and/or the CRFPD § 7460 et seq.

SEE Visa USA search warrant affidavit in Exhibits

Plaintiff contends, identically, that County of Santa Clara - James Sibley and Thomas Flattery and California Attorney General's Office Bud Frank used and obtained plaintiff's consumer credit report in violation of § 1681 et seq, for the impermissible purpose of a criminal investigation and prosecution. (SEE Allen v Calvo, supra.)

Plaintiff contends that even had City of Palo Alto Dave Flohr's receipt of plaintiff's consumer credit report(s) been deemed lawful that lawfulness did not somehow automatically extend to City of Menlo Park and/or F.B.I./REACT Officer Alex Bouja, Santa Clara County or California Attorney General.

"Lawful receipt of consumer credit report by vice president of collection agency did not somehow automatically extend to Attorney for the collection agency; Attorney did not obtain the report, pursuant to the Fair Credit Reporting Act (FCRA), from any "consumer reporting agency" but, rather, he obtained it from vice president, and he did not obtain it for any purpose enumerated in the statute."

See Chester v Purvis, *supra*.

"Provision of Fair Credit Reporting Act (FCRA) governing permissible purposes of consumer credit reports governs not merely obtaining such a report, but using one as well."

See Chester v Purvis, *supra*.

Plaintiff contends that City of Menlo Park, FBI/REACT Officer Alex Bouja obtained and used plaintiff's consumer credit report(s) for the impermissible purpose of a criminal investigation and prosecution, negligently, willfully and/or in reckless disregard for plaintiff's rights pursuant to § 1681 et seq. (Also see Duncan v Handmaker, (C.A. 6(KY) 1998) 149 F.3d 424)

Plaintiff contends that the request for plaintiff's records by City of Palo Alto from Trans Union, Experian and/or Equifax should have been limited to "§ 1681f Disclosures to governmental agencies", not plaintiff's entire credit report/file.

"Under Fair Credit Reporting Act (FCRA), credit reporting agency could not disclose identifying information about consumer to government unless it was of type specifically allowed by statutory provision, i.e., name, address, former addresses, places of employment, and former places of employment." See *Sotomayor v. U.S.* (E.D. Cal 2003) 278 F.Supp.2d 1151

Plaintiff contends that TransUnion, Experian and Equifax should not have complied with the City of Palo Alto search warrants which were not an order of a court having jurisdiction to issue such an order pursuant to § 1681b, and they should not have complied with the search warrant's request for plaintiff's consumer credit report instead of being limited to § 1681f.

"Under Fair Credit Reporting Act, corporation including division which provided subscribers with consumer credit information could not comply with grand jury subpoena duces tecum seeking credit information on particular individual where subpoena was not authorized by magistrate or district court." See *In re GREW* (C.A.9(Cal.) 1980) 633 F.2d 885

Plaintiff contends that the out-of-state/out-of-jurisdiction search warrants infringed and invaded plaintiff's privacy rights, unlike "Rakas v Illinois" cited by Santa Clara County D.A. Thomas Plattee, thereby giving plaintiff standing to at least challenge the seizure of plaintiff's consumer credit reports, financial records and other personal information. See *U.S. v Kimball* (C.A.1(Md.) 1994) 25 F.3d 1

Plaintiff contends that the subsequent search warrants based on the obtaining, disclosing and use of plaintiff's consumer credit report(s), including but not limited to; Visa USA, T-Mobile, Avis, Hertz, Airline Reporting Corporation (A.R.C.), San Francisco International/AirPort, Public Storage, Plaintiff's laptop, Plaintiff's Las Vegas residence should all be suppressed and/or ruled inadmissible, and deemed fruit of a poison tree.

Plaintiff contends that, as the search warrants were issued pursuant to California Government Code § 7475, the California Right to Financial Privacy Act § 7460 et seq. clearly provides a remedy under state exclusionary rule and standing for plaintiff to challenge the admissibility of evidence obtained in violation of state law, contrary to County of Santa Clara D.A. Thomas Flaherty's stated belief.

Plaintiff contends that the citing of *In re Lance W.*, *supra*, by County of Santa Clara D.A. Thomas Flaherty regarding Proposition 8 is misplaced.

"The full text of section 28(d) states: "Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and postconviction motions and hearings, or in any trial or hearing of a juvenile court for a criminal offense, whether heard in a juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press." See *In re Lance*, *supra*.

Plaintiff contends that the CRFPA § 7460 et seq. takes precedent and pro tanto overrides and annuls Proposition 8 referred to in *In re Lance W.*, *supra*, and further allows plaintiff to challenge the search warrants under California's vicious exclusionary rule, thus granting plaintiff a state and/or federal remedy/remedies.

"§ 7491 Chapter to supersede other laws

Should any other law grant or appear to grant power or authority to any person to violate the provisions of this chapter, the provisions of this chapter shall supersede and pro tanto override and annul such law, except those statutes hereinafter enacted which specifically refer to this chapter." (underlines added)

"§ 7489 Admissibility of evidence

Evidence obtained in violation of this chapter is inadmissible in any proceeding except a proceeding to enforce the provisions of this article."

Plaintiff contends that since Proposition 8 and *In re Lance W.*, *supra*, were after the CRFPA § 7460 et seq. and do not "specifically refer" to § 7460 et seq. in any way, then the CRFPA § 7460 et seq. "shall supersede and pro tanto override and annul", and therefore take precedent, regarding Proposition 8 and *In re Lance W.*, *supra*. Plaintiff contends that if the legislature/adopting body in Proposition 8 and *In re Lance W.*, *supra*, therefore would have or should have specifically referred to § 7460 et seq. "The adopting body is presumed to be aware of existing laws and judicial construction thereof. . ." See *In re Lance W.*, *supra*.

Plaintiff contends that, under the familiar rule of construction, *EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS*, where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. So since the exception is clear in § 7491 and Proposition 8 and/or *In re Lance W.*, *supra*, do not "specifically refer to" § 7460 et seq., then Proposition 8 and/or *In re Lance W.*, *supra*, should not "be implied or presumed."

Plaintiff contends, and requests that this court apply, the well-established principles of construction are that any ambiguities regarding § 7460 et seq., Proposition 8, *In re Lance W.*, *supra*, and/or California's exclusionary rule, should be resolved in favor of the plaintiff.

"Under California law, legality of a search and seizure may be challenged by anyone against whom evidence thus obtained is used."
See *Zuecher v Stanford Daily* (U.S. Cal. 1978) 98 S.Ct 1970, rev'd on other grounds

Plaintiff contends that the TransUnion, Experian and Equifax search warrants violated the FCRA § 1681 et seq., the VISA USA, T-Mobile, Avis, Hertz, ARC, Public Storage, plaintiff residence in Las Vegas, searches violated plaintiff's rights to privacy, the subsequent subpoenas duces tecum, were fruit from the poison tree, the TransUnion, Experian, Equifax, VISA USA, T-Mobile, Avis, Hertz and ARC search warrants were in violation of the (IV) Fourth Amendment and should all be suppressed, quashed, ruled inadmissible as evidence in any criminal proceeding, and/or declaratory and/or injunctive relief should be granted by this court.

Plaintiff contends that Santa Clara County D.A. Thomas Flanney's citing of *United States v Miller*, *supra*, is misplaced and does not apply.

"The Right To Financial Privacy Act

Congress enacted the Right to Financial Privacy Act in 1978 in response to *United States v Miller*, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) in which the Supreme Court held that a customer of a financial institution has no standing under the Fourth Amendment of the Constitution to contest government access to his financial records. H.R. Rep. No. 1383 95th Cong. 2nd. Sess. 33, reprinted in (1978) U.S. Code Cong. & Ad. News 9273, 9306 (hereinafter H.R. Rep No. 1383).

Although the Court in *Miller* recognized the sensitive nature of a banking customer's financial records, it concluded that since the records are the property of the financial institution, the customer has no recognizable privacy interest in them. 425 U.S. at 440-441, 96 S.Ct. at 1622-23.

Congress nevertheless, noting that the Fourth Amendment does not prevent or advise against legislative or executive efforts to establish nonconstitutional protections against possible abuse, SEE *Zurcher v Stanford Daily*, 436 U.S. 547, 567, 98 S.Ct. 1970, 1982, 56 L.Ed.2d 525 (1978), enacted the RFPA with substantial input on the part of the law enforcement agencies.

H.R. Rep. No. 1383 at 4. In so doing, Congress and most law enforcement agencies held the belief that privacy protection and effective law enforcement were compatible. Id. The basic thrust of the Act is that customers of financial institutions are entitled to notice of any government request for their financial records and an opportunity to challenge the request. " (Underlines added)

See *Hunt v U.S. S.E.C.* (N.D. Tex 1981) 520 F.Supp. 580

Plaintiff is a "customer" of the "financial institution" of Visa, and F.B.I/REACT Officer Alex Bouja is a "government authority" and person", within the meaning of §3401 et seq.

Plaintiff is a "customer" of the "financial institution" of Visa, and City of Palo Alto - Magistrate Charles Haydew, Officer Dave Flohr, City of Menlo Park - Alex Bouja, County of Santa Clara - D.A. James Sibley and Thomas Flattery, and California Attorney General's Office - D.A.G. Bud Frank, are a "local agency", "person", and "state agency", within the meaning of §7460 et seq.

Plaintiff contends that TransUnion, Experian and Equifax failed to follow reasonable procedures, including but not limited to, by not obtaining the required certification of §1681e compliance procedures, and disclosing plaintiff's consumer credit report(s) based on the invalid search warrants which contain "Non-Disclosure" stipulations, read "Pursuant to California Government Code §7475, were out-of-state search warrants, and were not the order of a court having jurisdiction to issue such an order, in violation of §1681 et seq.

Plaintiff contends that therefore TransUnion, Experian and Equifax acted negligently, willfully and/or in reckless disregard for plaintiff's rights pursuant to §1681 et seq. SEE Centrixi v Experian Information Solutions, Inc., supra.

"§ 1681e Compliance Procedures

(A) Identity and purposes of credit users

Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under Section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of the new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in Section 1681b of this title."

Plaintiff contends that City of Palo Alto - Magistrate Charles Hayden and Office Dave Fluke, City of Menlo Park and F.B.I/REACT Alex Bouja, County of Santa Clara - D.A. James Sibley and Thomas Flattley, and California Attorney General's Office - D.A.G. Bud Frank violated the FCRA § 1681 et seq. including but not limited to, § 1681b(f) by obtaining and using plaintiff's consumer credit report

Plaintiff contends that the search warrants' "Non-Disclosure" stipulation was not supported by probable cause, and violated plaintiff's right to be notified and to possibly contest the disclosures of the search warrants prior to their execution.

"It is entirely possible, and even probable that the financial institutions of which the Plaintiff's are customers could have released the records without the Plaintiff's EVER having knowledge of the disclosure. Without the availability of injunctive relief then, the entire purpose of the Act is gutted. As a consequence, the customer's records ARE OR may be released without the customer EVER having the opportunity to challenge the request.

The initial determination made by the requesting ~~government~~ authority that the RFPA does not apply effectively defeats the customer's challenge rights under the Act."

SEE Hunt v U.S. S.E.C., *supra*.

Plaintiff, likewise, makes the same analogy regarding the search warrants and their "Non-Disclosure" stipulations, as well as the Santa Clara County - D.A. Thomas Flattery's argument and Santa Clara County's denial of plaintiff's objections to the disclosure, obtaining and use of plaintiff's consumer credit report(s), financial record(s) and other personal records.

Plaintiff requests that this Court grant relief for the enclosed multiple violations in the form of suppression, permanent injunctive relief, declaratory relief and/or rule that all evidence obtained be deemed inadmissible in any criminal proceeding, thereby reversing the state court's previous decisions regarding the disclosure, obtaining and use of plaintiff's consumer credit report(s), financial record(s) and all other information subsequently obtained therefrom.

"§1681b(f) Certain use or obtaining of information prohibited

A person shall not use or obtain a consumer report for
any purpose unless --

(1) the consumer report is obtained for a purpose for which
the consumer report is authorized to be furnished under this section;

and

(2) the purpose is certified in accordance with section 1681e
of this title by a prospective user of the report through a
general or specific certification."

Plaintiff contends that Visa violated § 3401 et seq. and/or § 7460 et seq.
by providing F.B.I./REACT and City of Montrose - Alex Bouja with
plaintiff's financial record(s) without legal process and/or compliance with
§ 3401 et seq. and/or § 7460 et seq. (See Visa USA search warrant affidavit in Exhibits)

"§ 3402 Access to financial records by Government Authorities
prohibited; Exceptions

Except as provided by section 3403(c) or (d), 3413 or 3414 of
this title, no government authority may have access to or obtain
copies of, or the information contained in the financial records
of any customer from a financial institution unless the financial
records are reasonably described and - - - - -."

Plaintiff also contends that Visa should not have provided plaintiff's financial
records based on the search warrants, in violation of § 7460 et seq.

" § 3403 Confidentiality of financial records

(p) Release of records by financial institutions prohibited

No financial institution, or officer, employee, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter."

" § 7470 Requests for disclosures; particularity and scope;

records; crimes

(A) Except as provided in Section 7480, no officer, employee, or agent of a state or local agency or department thereof, in connection with a civil or criminal investigation of a customer, whether or not such investigation is being conducted pursuant to formal judicial or administrative proceedings, may request or receive copies of, or the information contained in, the financial records of any customer from a financial institution unless the financial records are described with particularity and are consistent with the scope and requirements of the investigation giving rise to such request and:"

"Further, the financial institutions may not release the requested financial records until the government "certifies in writing to the financial institution that it has complied with the applicable provisions" of the RFPA, including notice to the customer of the existence of the subpoena, summons, search warrant, or request, the nature of the government's inquiry, and permitting the customer sufficient time to respond to the notice."

"§ 7471 Requests in connection with civil or criminal investigation of customer; nondisclosure; liability for disclosures and refusals to disclose

(A) Except in accordance with requirements of Title II (commencing with Section 14160) of Part 4 of the Penal Code or Section 7473, 7474, 7475, or 7476, no financial institution, may provide or authorize another to provide to an officer, employee, or agent of a state or local agency or department thereof, any financial records, copies thereof, or the information contained therein, if the director, officer, employee, or agent of the financial institution knows or has reasonable cause to believe that the financial records or information are being requested in connection with a civil or criminal investigation of the customer, whether or not an investigation is being conducted pursuant to formal judicial or administrative proceedings."

Plaintiff contends that City of Menlo Park F.B.I./REACT Alex Bouja violated plaintiff's rights to privacy by obtaining plaintiff's records from Visa, Avis, Hertz, ARC, United Airlines, plaintiff's luggage from United Airlines checked baggage system, and seizing and searching plaintiff's cellphone/cell phone numbers in violation of the Fourth Amendment, without legal process, along with City of Palo Alto Officer Dave Flohr. Plaintiff requests that all of which be suppressed and/or deemed inadmissible in any criminal proceedings.

(See Visa, Avis, Hertz and ARC search warrants, affidavits and Exhibits A-E, 1-23)

"The Right to Financial Privacy Act has comprehensive provisions concerning the customer's right to know of government attempts to procure his/her/its financial records." . . .

"§3412(b) requires notice to the customer that the agency that originally procured the records is transferring the records to another governmental agency or department, a practice which is generally prohibited by the Act "unless the transferring agency or department certifies in writing that there is notice to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department."

SEE IN RE CASTIGLIONE, supra.

Plaintiff contends that FBI/REACT Alex Bouja violated § 3401 et seq by obtaining plaintiff's financial records without legal process from VISA and then transferring plaintiff's financial records to City of Palo Alto Officer Dave Flohr, who then used and subsequently obtained plaintiff's financial records from VISA with the VISA USA search warrant, hence in violation of § 3460 et seq. SEE VISA USA search warrant affidavit

"Oral response by bank employee to oral request by Air Force investigator regarding bank records of service member was request for disclosure of financial records and was governed by Right to Financial Privacy Act (RFPA), and thus, employee's response to inquiry, which was not preceded by mandated procedural steps, violated RFPA; oral disclosure was bank-related information derived from service member's bank records, and RFPA does not require that such information be in writing to be protected." SEE ANDERSON v. LA JUNTA STATE BANK (C.A.10(Colo) 1997) 115 F.3d 756

"A credit card holder would reasonably expect that information about him disclosed by changes made on a credit card will be kept confidential unless disclosure is compelled by legal process,..."

See People v Blair (Cal 1979) 159 Cal. Rptr. 818, 25 Cal. 3d 640 - motion granted on other grounds.

Plaintiff contends that the scope of the search warrants were too broad to comport with the particularity requirements of the Fourth Amendment and/or § 7470 and/or the reasonableness requirements of § 3402.

"Scope of search was unreasonable, where documents provided by credit card company to prosecution constituted entire file of company relating to defendant's account." See People v Blair, *supra*.

"Finally, I previously noted that section 3402 imposes the requirement that a government authority must "reasonably describe" the financial records which it is seeking if the request falls within the ambit of the RFPA. The legislative history of the Act states quite bluntly that "this term is intended to mean that records being sought must be described as specifically as possible, and that a blanket request for 'all records' is insufficiently specific. H.R. Rep. No. 1383 at 50" See Hunt v U.S. S.E.C., *supra*.

Plaintiff contends that due to the multiple violations aforementioned that all search warrants should be deemed invalid, suppressed and/or inadmissible, that the subsequent search warrants and subpoenas should be suppressed, quashed and/or ruled inadmissible and/or plaintiff should be granted declaratory and/or injunctive relief, and that this Motion for Summary Judgment should be granted.

"§ 3418 Injunctive Relief

"In addition to any other remedy contained in this chapter, injunctive relief shall be available to require that the procedures of this chapter are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered."

"§ 7487 Injunctive Relief

In addition to any other remedy contained in this chapter or otherwise available, injunctive relief shall be available to any customer aggrieved by a violation, or threatened violation, of this chapter. In any successful action by the customer, costs together with reasonable attorney's fees as determined by the court may be recovered."

"Injunctive relief is available under Section of Right to Financial Privacy Act to require that procedures of Act are complied with without regard to whether or not government authority has actually obtained access to customer's financial records." See Hunt v U.S. S.E.C. supra.

"Where government authority has acted with reckless disregard for rights of individual under Right to Financial Privacy Act and failures to comply with procedures of Act are not merely technical defects, injunctive relief is warranted." See Hunt v U.S. S.E.C. supra.

Plaintiff contends that City of Palo Alto - Magistrate Charles Hayden and Officer Dave Flohr did not have good faith in the Trans Union, Experian, Equifax, Visa USA, T-Mobile, A.R.C. or Hertz search warrants.

Visa USA is outside the jurisdiction of City of Palo Alto, pursuant to § 7473(d)(1), T-Mobile is located in the state of Washington, A.R.C. is located in the state of Virginia, Hertz is located in the state of Oklahoma, along with TransUnion, Experian and Equifax being located outside the state of California, as previously noted.

Plaintiff contends that a reasonable officer would have known that the search warrants' locations of the above-mentioned states, were outside the officer's jurisdiction, in violation of the Fourth Amendment.

"A judicial officer's warrant cannot run outside the officer's jurisdiction."
See U.S. v Strother, *supra*.

"The Government bears the burden of proving that in searching for and seizing the disputed evidence, the searching agents held an objective good faith belief that the search warrant was valid.

Properly relying on the holdings of the 9th Circuit Court of Appeals in *United States v Kow*, 58 F.3d 423 (9th Cir 1995) and *Center Act Galleries-Hawaii, Inc. v United States*, 875 F.2d 747 (9th Cir 1989), the Magistrate Judge correctly found they did not."

SEE U.S. v SDI Future Health, Inc., *supra*.

In "Sears," the court discussed the three factors to be considered in determining whether the exclusionary rule should apply in a particular case: "(1) whether suppression would affect the group conduct that the exclusionary rule was designed to punish, i.e., police misconduct; (2) the source of the error in the particular case and whether any evidence suggested that the source, e.g., issuing magistrates, was inclined to ignore or subvert the Fourth Amendment; and (3) the basis for believing the exclusion of evidence will have a significant deterrent effect upon the source of the error."

See United States v. Sears, 411 F.3d 1124, 1128 (9th Cir. 2005)

Plaintiff contends that plaintiff has a reasonable, objective and subjective expectation of privacy, as well as a privacy interest, in the credit reports and financial records, based on the (IV) Fourth Amendment, the FCRA § 1681 et seq., the RPPA § 3401 et seq., the CRPPA § 7460 et seq. and the California Constitution, that society would recognize as objectively reasonable in this 21st Century, unlike in United States v. Miller, *supra*, and that plaintiff's personal paper(s), consumer credit report(s) and/or financial record(s) will only be obtained by valid legal process, including, but not limited to; particularly when obtained by a search warrant.

¹⁴The Fourth Amendment warrant requirement insures that the inferences supporting probable cause be drawn by a neutral and detached magistrate, rather than by those engaged in gathering evidence of crime." See U.S. v. SDI Future Health, *supra*.

"For Pappas to prevail on his summary judgment motion, he must demonstrate that no genuine issue of material fact exists over four elements. First, Pappas must show that the Calumet Police Department is a "user" within the FCRA. Since the City admits that it is in fact a "user" under the FCRA, no genuine issue of material fact exists concerning this element. Second, Pappas must demonstrate that the credit report obtained by the Calumet Police is a "consumer report" under the FCRA. Third, Pappas must establish that the Calumet Police obtained his credit report under false pretenses. And fourth, Pappas must show that there is no dispute of fact that the Calumet Police acted willfully or negligently when it obtained his consumer report under false pretenses."

SEE PAPPAS v City of Calumet City, supra.

Plaintiff contends that there are NO genuine issues of material fact over the four elements noted in "Pappas" for plaintiff to prevail on his summary judgment motion, as follows;

1) The City of Palo Alto, County of Santa Clara admit that it is in fact a "user" within the FCRA

2) There is no doubt that plaintiff's "consumer report" was disclosed, obtained and used. (SEE EXHIBITS A-E, 1-23)

(Also, see attached EXHIBIT B-July 21, 2005 -Opposition - "II. factual and procedural history")

3) The City of Palo Alto, County of Santa Clara obtained plaintiff's consumer credit report under false pretenses, for impermissible purposes, with invalid search warrants that were not an order of a court having jurisdiction to issue such an order, and by subsequently using plaintiff's consumer credit report for other purposes not stated in their affidavits.

4) City of Palo Alto, County of Santa Clara, City of Menlo Park, F.B.I./REACT, California Attorney General's Office, Magistrate Charles Hayden, Office Dave Fluke, Office Alex Bouja, D.A. James Sibley, D.A. Thomas Fluke, and D.A.G. Bud Frank, Acted negligently, willfully and/or in reckless disregard for plaintiff's rights, including but not limited to; by obtaining and/or using plaintiff's consumer credit report(s) without certifying with the credit reporting agencies pursuant to §1681b(f), by using plaintiff's consumer credit report(s) for impermissible purposes, and by obtaining plaintiff's consumer credit report(s) with invalid out of state/out of jurisdiction search warrants that were not an order of a court pursuant to §1681b.

"Any person who willfully or negligently fails to comply with any requirement under the FCRA with respect to any consumer may be civilly liable to that consumer. See 15 U.S.C. §§1681n, 1681o, and 1681g. Consequently, if a user acquires a consumer credit report under false pretenses in violation of §1681g, then the consumer may recover civil damages from that user." See Pappas v City of Calumet City, supra.

Plaintiff contends that for the enclosed mentioned reasons, plaintiff has established a prima facie case as needed to prevail on summary judgment, and hereby requests that this court grant plaintiff summary judgment and allow plaintiff's case to proceed to trial for actual, compensatory and punitive damages. (Note: In 1996, Congress amended §1681n to expressly provide a cause of action against a party for "obtaining a consumer report under false pretenses or knowingly without a permissible purpose." See Duncan v Handmacher (C.A. 6 (Ky.) 1998) 149 F.3d 424.)

Plaintiff requests that this Court exercise pendent and/or ancillary jurisdiction over all subsequent issues which have sprung forth directly and/or indirectly from the violations of the FCRA § 1681 et seq., the RFPA § 3401 et seq., the CRFPA § 7460 et seq., federal and state constitutional rights, and/or plaintiff's rights to privacy. All of which, have been raised and/or exhausted in the California Supreme Court, and all of which this Court has jurisdiction.

Those claims include, but are not limited to; ineffective assistance of counsel, statute of limitation violations, illegal search and seizure, excessive bail, due process and equal protection violations, prosecutorial misconduct, and suggestive identification, as noted in California Supreme Court case numbers S156104, S157535 and the Petition for Review.

Plaintiff contends that plaintiff's participation in the Santa Clara County Regimented Correction Program (RCP) and subsequent completion triggers the due process rights and equal protection rights of the U.S. Constitution, where the state has created a liberty interest that upon successful completion of the RCP bootcamp-style diversion program pursuant to California Penal Code 1000-1001.75 and the Community-Based Punishment Act P.C. 8050 et seq., plaintiff would be released as other participants were released. (SEE THE RCP certificates in EXHIBITS)

Plaintiff thereby request that this Court order plaintiff's immediate release, hold an evidentiary hearing and appoint counsel, and/or reverse plaintiff's State court criminal conviction and grant plaintiff immediate RELEASE ON PERSONAL RECOGNIZANCE.

"Appellant had remained incarcerated until November 4, 1998, at which time she was released to the Regimented Correction Program. This program included 12 weeks of treatment while incarcerated and release to a sober living environment. The final phase of the program involved strict supervision by a probation officer. Appellant was currently in the final phase of the program." See, *In re Brittany C.*, (Cal. App. 6 Dist 1999) 90 Cal Rptr. 2d 737

Plaintiff was a participant, and successfully completed the same Regimented Correction Program as *In re Brittany C.*, supra, in the same Santa Clara County, and therefore should be given the same release, and not be treated arbitrarily, and now be granted an immediate order of release.

"In *Tracy*, we held that a participant in a temporary release program must be provided with a Wolff-type hearing before he or she may be deprived of his or her liberty interest in participating in that program."

See *Anderson v Rezaee* (C.A.2(N.Y.) 2006) 446 F. 3d 342 -rev'd on other grounds,

also see *Wolff v McDonnell*, 418 U.S. 539, 945, G 2963 and *Morrissey v Brewer*, 408 U.S. 471, 92 S.Ct. 2593

Lastly, plaintiff hereby demands A JURY TRIAL for compensatory, Actual and/or Punitive Damages pursuant to §1681n, §1681o, §1681g, §117, §3415, §7485, §7486, §1983, and all other statutes that this court deems fit.

Wherefore, plaintiff prays for all relief which is just and proper.

Dated: MAY 16, 2008


Signature of Plaintiff, In Pao SE

EXHIBIT

A



Consumer Response Center

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

August 02, 2007

Howard Young
F44590 3A 04-143
PO Box 3461
Corcoran, CA 93212

Re: FTC Ref. No. 11189923

Dear Howard Young:

This is in response to your complaint concerning your credit report. While the FTC does not collect or keep credit records on individual consumers, it is responsible for making sure that credit bureaus report accurate and up-to-date information. We have enclosed a brochure that addresses your concerns. Between the brochure and this letter we hope to be able to answer all of your questions.

Credit bureaus are private information distributors which report credit information supplied by retailers who use their services. Most credit bureaus operate locally and you should look in the yellow pages of your telephone book under "credit bureaus" or "credit reporting agencies" to find the credit bureau or bureaus most likely to have your file. It is possible that you may have a file in more than one local agency. In addition to the local credit bureaus, there are three national credit bureaus that may have you on file:

- Equifax, P.O. Box 740241, Atlanta, GA 30374-0241
(800) 685-1111

- Experian, P.O. Box 949, Allen, TX 75013
(888) 397-3742

- Trans Union, 760 West Sproul Road, P.O. Box 390, Springfield, PA 19064-0390
(800) 916-8800

The Fair Credit Reporting Act ("FCRA") became effective in 1971 and was significantly amended in 1997. It was designed to protect consumers against the circulation of inaccurate or obsolete information reported about them in consumer reports (a credit report is one type of consumer report). Negative information, if accurate, generally may be reported for 7 years with the exception of a bankruptcy, which may be reported for 10 years.

The Fair Credit Reporting Act allows a consumer reporting agency to issue a consumer report to a person ("user") which it has reason to believe has a legitimate business need for the information in connection with a business transaction involving the consumer. When

permissible purposes exist, parties may obtain, and consumer reporting agencies may furnish, consumer reports without the consumer's permission with the exception of employment and medical purposes. Credit reports containing medical information or reports issued to present or prospective employers always require the consent of the consumer.

The FCRA provides that any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined, imprisoned for not more than 2 years, or both. Authority to bring criminal action for violation resides solely in the U.S. Department of Justice, not the Federal Trade Commission.

While it is permissible under the FCRA for credit reporting agencies to furnish lists of names and addresses to credit card and insurance companies, Section 604(e) allows consumers to "opt out" of these lists. Proper notification of the credit reporting agency will exclude the consumer's name and address from any list that the credit reporting agencies routinely provide to credit card and insurance companies. To properly notify the credit bureau, you should call the toll free number that shall be included in the unsolicited offers, or contact the credit bureau directly and fill out an "opt out" form. The phone call will remove your name for two years. Filling out the credit bureau's "opt out" form will permanently keep your name off the lists.

If you are denied credit because of a credit report, the FCRA requires the creditor to tell you the name and address of the credit bureau which provided the information. You should then contact that credit bureau to obtain your credit report. You have the right to learn the nature, substance, and sources of information in your file at the credit bureau at the time of your request. Most consumers request disclosures in written form, however, at your request, disclosures may be obtained in person, upon reasonable notice, during normal business hours, or by telephone if the consumer makes a written request for telephone disclosure and pays the cost of the telephone call. For either type of disclosure, section 610 of the FCRA requires that you must provide proper identification before you receive this information. If you request the credit report within 60 days of the denial notice, the report is free. At other times, the credit bureau may charge a fee of \$9.00.

Section 611 of the FCRA provides the procedure to be followed if the consumer disputes the accuracy of the information in the consumer's file. If information in your file is inaccurate, you should write both the consumer reporting agency and the creditor or other party who furnished the inaccurate information to the consumer reporting agency. Tell both of them that a dispute exists. You should provide both of them with any information that you have that will assist them in investigating your dispute. You should clearly state the facts concerning the disputed item and include copies of any letters or other documents that support your position. We suggest that you send your letters via certified mail, and that you retain a copy for your records. Remember, the right to dispute information applies only to items that are incomplete or inaccurate. The FCRA does not give you the right to dispute information just because it is unfavorable.

Consumer reporting agencies are required to investigate your dispute usually within 30 days, unless the bureau has reasonable grounds for determining that the dispute is frivolous or irrelevant. The creditor or other entity must also conduct a reinvestigation and notify the consumer reporting agency of the results within that 30-day period. If the item is wrong or can no longer be verified, it must be corrected or dropped from your file. If the item is verified by the creditor (or other information furnisher) and accepted by the consumer reporting agency, the

information will remain in your file at the consumer reporting agency. After the investigation, the consumer reporting agency will send you an updated copy of your credit report if it has changed as a result of the investigation. If, after the credit bureau has concluded its reinvestigation, you still don't agree that your report is accurate, you should write a short statement of 100 words or less giving your side of the situation and ask the consumer reporting agency to include it in your file. This statement or a summary of it then becomes a part of your credit report. If your report has changed based on your dispute, you have the right to ask the credit bureau to send your updated report to anyone who has received a copy of your credit report within the last six months (two years if sent to an employer or potential employer). You may be charged a small fee for having these updated reports sent.

If information is inaccurate or has not been verified by the furnisher within the 30-day period, it must be removed from your file. It can only be reinserted in the file if the creditor or other furnisher of information certifies its accuracy to the credit bureau. In turn the credit bureau must notify you in writing that the information is being reinserted. If the furnisher finds the information to be accurate and you still dispute the information, the furnisher cannot continue to report that information unless the information is accompanied by a statement that it is disputed.

Applying for credit, insurance, or financing for large purchases creates credit record inquiries. A creditor may ask your local credit bureau for the number of inquiries it has received about you. Excessive inquiries may indicate to a creditor that you may become overextended with too many active credit accounts and may cause a creditor to deny your application for credit because of excessive inquiries.

The FCRA does not specifically state how long inquiries may remain on the credit report. However, the FCRA does require that credit bureaus disclose to consumers any recipient of a consumer report for a two year period regarding employment purposes and a six month period for any other purpose. The law does not require that inquiries stay on the credit report for any specified period of time, but only that the credit bureau must be able to provide consumers with this information upon request. Because the FCRA does not specifically state how long inquiries may remain on the credit report, credit bureaus have the right to set their own policy or procedure regarding how long inquiries will remain on the credit report.

If you feel that your credit report does not accurately portray your creditworthiness, Regulation B, which implements the Equal Credit Opportunity Act, provides that you have the right to present information to a prospective creditor to show that your credit report does not reflect your ability or willingness to repay. It is possible that the consumer reporting agency used by the firm to which you applied for credit does not include in their files those organizations with which you have already established credit (an occurrence which is not in violation of the FCRA). To overcome this you may wish to provide the creditor with copies of bill statements and other information about your credit history from other creditors with which you have done business. The creditor must consider this information at your request. Also, if you know there is adverse information on your credit report, it is often best to explain the circumstances surrounding that item and provide other positive information to the creditor at the time you complete an application.

We cannot act as your lawyer or intervene in a dispute between a consumer and a credit bureau or between a consumer and a creditor or furnisher of information. The private enforcement provisions of the FCRA permit the consumer to bring a civil suit for willful

noncompliance with the Act. You may receive actual damages or punitive damages up to \$1,000 for willful noncompliance (Section 616). You may also sue for negligent noncompliance and recover actual damages sustained by you (Section 617). Attorney's fees, as determined by the court, will be allowed for both forms of action. If you believe that the FCRA has been violated, we suggest that you consult a private attorney or a local legal services organization.

Sincerely yours,

Consumer Response Center

Enclosures:

1. Fair Credit Reporting (CRE-17)
2. How to Dispute Credit Report Errors (CRE-21)

EXHIBIT

B

1 GEORGE W. KENNEDY,
2 DISTRICT ATTORNEY, #52527
3 THOMAS L. FLATTERY
4 DEPUTY DISTRICT ATTORNEY, # 186856
5 COUNTY GOVERNMENT CENTER, WEST WING
6 70 W. Hedding Street
7 San Jose, California 95110
8 Telephone: (408) 792-2629

9 Attorneys for the People

10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
17 18 19 20 21 22 23 24 25
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
8 IN AND FOR THE COUNTY OF SANTA CLARA

9 PEOPLE OF THE STATE OF
10 CALIFORNIA,

11 Plaintiff,

v.

13 HOWARD YOUNG,

14 Defendant.

NO. CC454838

OPPOSITION TO MOTION TO
TRAVERSE, QUASH, AND TO
SUPPRESS EVIDENCE

DATE: JUNE 2, 2005
TIME: 8:30 p.m.
DEPARTMENT: 23
ESTIMATED TIME : 10 min.

I. Introduction.

DEFENDANT filed a motion to traverse and suppress evidence recovered with several search warrants. While he quarrels with the affiant's wording on a few points, he fails to establish that the affidavits contain any false statements or that they would not contain sufficient information to justify a warrant even if the challenged wording were changed to something more to DEFENDANT's liking. Moreover, DEFENDANT can not establish a constitutionally protected expectation of privacy in records obtained from third parties.

FILED

JUN 02 2005

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
By *Stu H* DEPUTY

**I. DEFENDANT Has No Privacy Interest
In Records Held By A Third Party.**

DEFENDANT challenges nine separate search warrants relating to business records maintained by various companies with which he did business. He has no standing to object to those warrants.

It is well settled that a defendant challenging a search, must first establish "a legitimate expectation of privacy in the invaded place." (*People v. Jenkins* (2000) 22 Cal.4th 900, 972.) The United States Supreme Court clearly held that a person has no expectation of privacy in information that is voluntarily provided to a third party. (*United States v. Miller* (1976) 425 U.S. 435 [48 L.Ed.2d 71, 96 S.Ct. 1619]). As in the current case, the *Miller* defendant objected to disclosure of his personal banking records. The High Court rejected his argument and explained:

The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. (*United States v. White*, 401 U.S. 745, 751-752 (1971)). This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed." (*Id.*, at p. 443 [48 L.Ed.2d at p. 79].)

Following Proposition 8, the admissibility of evidence in California criminal trials depends on the federal rules of exclusion. (*In re Lance W.* (1985) 37 Cal.3d 873, 873.) Federal law does not provide a remedy for a challenged search of the third party records that are "voluntarily conveyed to the [businesses] and exposed to their employees in the ordinary course of business." (*People v. Pearson*, 169 Cal. App. 3d 319 (citing, *Miller*, *supra* 401 U.S. at 442)

Accordingly, DEFENDANT's motions regarding records from E-bay, Paypal, Transunion, Experian, Equifax, ARC, T-Mobile, Visa, Avis and Hertz all fail for lack of standing.

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77

II. The Affidavit was proper.

2 In the leading case of *Franks v. Delaware* (1978) 438 U.S. 154, the Court held a
3 defendant has a limited Fourth Amendment right to challenge the validity of a search warrant by
4 controveering the factual allegations made in the supporting affidavit. A defendant is entitled to
5 an evidentiary hearing on the affidavit's veracity *only after* making a *substantial preliminary*
6 *showing* that (1) the affidavit includes a false statement made "knowingly and intentionally, or
7 with reckless disregard for the truth," and (2) "the allegedly false statement is necessary to the
8 finding of probable cause." (*Id.* at pp. 155-156; *People v. Hobbs* (1994) 7 Cal.4th 948, 974;
9
10 *People v. Luttenberger* (1990) 50 Cal.3d 1, 9-11.)

11 Because there is a presumption of validity in favor of the affidavit supporting a search
12 warrant, a challenger's attack,

must be more than conclusory and must be supported by more than a mere desire to cross examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.

(Franks v. Delaware, supra, 438 U.S. at p. 171.)

In addition to this substantial preliminary showing that a false statement knowingly and intentionally, or recklessly was included in the affidavit, a defendant must also show that when this misstatement is set to one side, the remaining content of the affidavit is insufficient to support a finding of probable cause. (*Id.* at pp. 171-172.) Only then is the defense entitled to an evidentiary hearing. If sufficient unchallenged information remains to support a finding of probable cause, the motion to traverse must be denied without a hearing.

5 Here, DEFENDANT challenges two statements contained in the affidavit. Neither is false.

1 First, DEFENDANT cites a statement that "over the last year several possible suspects have
2 been considered, but no evidence has been found to tie them to this series of crimes."
3 DEFENDANT then lists three individuals who were investigated with respect to one separate
4 incident each. However, as the affiant clearly stated, this case involved a series of nearly identical
5 incidents spanning several years. The series of crimes is connected by the suspect's "M.O." as
6 described in detail by the affiant. While the affiant acknowledged that other suspects were
7 considered, he correctly stated that none could be tied to the series of crimes. DEFENDANT has
8 done nothing to suggest that this statement is in any way untrue.
9

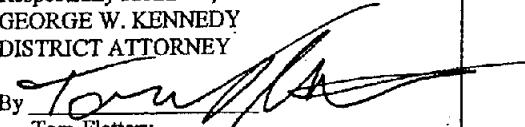
10 DEFENDANT next challenges a statement relating to an innocent buyer of stolen memory
11 chips who traced the chips back to a seller with the screen name of "Bro.H." DEFENDANT reads
12 that phrase to mean the buyer purchased the chips directly from Bro.H. The affiant makes no such
13 claim. Rather, the affiant correctly states that the buyer traced the chips and found that Bro.H had
14 listed 50 similar chips within about a week of when they were stolen. The statement is not false.
15 Moreover, even if the further explanation suggested by DEFENDANT were added, the result would
16 have no effect on probable cause.
17

III. Conclusion.

18 Defendant has failed to make a substantial preliminary showing that the affidavit is false and
19 that the challenged statements are necessary for finding probable cause. The court should not allow
20 an evidentiary hearing.
21

22 Dated: June 1, 2005

23 Respectfully submitted,
24 GEORGE W. KENNEDY
25 DISTRICT ATTORNEY

By 
24 Tom Flattery
25 Deputy District Attorney

1 GEORGE W. KENNEDY,
2 DISTRICT ATTORNEY, #52527
3 THOMAS L. FLATTERY
4 DEPUTY DISTRICT ATTORNEY, # 186856
5 COUNTY GOVERNMENT CENTER, WEST WING
6 70 W. Hedding Street
7 San Jose, California 95110
8 Telephone: (408) 792-2629

9 Attorneys for the People

FILED

JUN 29 2005

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of California County of Santa Clara
By _____
S. CHUA
Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
8 IN AND FOR THE COUNTY OF SANTA CLARA

9 PEOPLE OF THE STATE OF
10 CALIFORNIA,

NO. CC454838

11 Plaintiff,

OPPOSITION TO MOTION TO
QUASH SUBPOENA DUCES
TECUM

12 v.
13 HOWARD YOUNG,

14 Defendant.

DATE: July 1, 2005
TIME: 1:30 p.m.
DEPARTMENT: 29Q
ESTIMATED TIME: 10 min.

16
17
18 I. Introduction.

19 DEFENDANT is charged in a 31 count Information with Burglary and Grand Theft
20 resulting from 16 separate break-ins at high technology companies over the last four years.

21 DEFENDANT is tied to the various crimes in several ways, including through air travel and rental
22 car records showing that he traveled to the Bay Area just before each burglary and left just after.

23 DEFENDANT is identified with the air travel records through several of his credit cards used to
24 purchase the tickets.

Currently before the court is a motion to release subpoenaed documents relating to account holder information for the various credit cards used by DEFENDANT and car rental records from Hertz and Avis.¹ On June 14, 2005, DEFENDANT filed a motion to quash each of those subpoenas claiming that: (1) this court lacks jurisdiction to rule on the subpoenas; (2) police learned DEFENDANT's credit card numbers though review of credit reports that DEFENDANT believes police should not have obtained; and, (3) the subpoenas are overbroad.

DEFENDANT is wrong on each point.

II. Procedural History

10 On April 21, 2005, DEFENDANT filed a Motion to Traverse, Quash and Suppress evidence
11 relating to thirteen Search Warrants executed while investigating this case. Among
12 DEFENDANT's claims were that the police violated his privacy rights by using Search Warrants to
13 obtain his credit reports. On April 25, 2005, the court entered a Not Guilty plea for DEFENDANT,
14 set a Preliminary Hearing Date for June 2, 2005 and continued his Motion to Traverse to be heard
15 with the Preliminary Hearing..

On May 10, 2005, DEFENDANT filed a Motion to Compel Discovery requesting, among other things, various certifications, notices and jurisdictional agreements relating to the production and use of his credit reports. DEFENDANT apparently incorrectly interpreted 15 United States Code, section 1681, et. seq. as requiring those certifications. On May 16, 2005, Judge Lisk denied DEFENDANT's motions relating to the certifications and agreements explaining that court authorized Search Warrants justified production.

At the Preliminary Hearing on June 2, 2005, Judge Teihl denied DEFENDANT's motion to traverse the search warrants. DEFENDANT thereafter made an oral motion to suppress evidence

¹ The car rental records were previously produced through Search Warrants. The purpose of the current subpoena is

1 arguing essentially that all subsequent evidence was the fruit of the search warrants for his credit
 2 reports. Judge Teihl also denied that motion and held DEFENDANT to answer as charged.

3 The documents at issue in the current motion were originally subpoenaed to the Preliminary
 4 Hearing. However, at the time Judge Teihl issued his Holding Order, no documents had arrived in
 5 court. The People's Motion to Release trailed. The instant motion followed in which
 6 DEFENDANT essentially challenges, for the fourth time, the same warrants relating to his credit
 7 reports, based on the same wrong interpretation of inapplicable law Federal law.

9
 10 III. Law and Argument

11 A. This Court Has Jurisdiction Over the Records.

12 DEFENDANT's argument appears to be as follows: The current subpoenas identify
 13 records relating to various credit card numbers. Police learned some of those credit card
 14 numbers through credit reports obtained from Credit Reporting Agencies. Credit Reporting
 15 Agencies are federally regulated. Federal law provides Federal Courts with "original jurisdiction
 16 of civil actions or proceedings arising under any act of Congress regulating commerce."

17 Therefore since the current subpoenas are the product of information developed from companies
 18 that are federally regulated, then only Federal courts have jurisdiction over the subpoenas.

19 Defendant should be commended that the enthusiasm of his argument is not diminished
 20 by the total absence of legal support.

22 Defendant stands charged before this Court. This Court has physical possession of
 23 documents that will be offered into evidence at trial before this Court. Accordingly, this court
 24 has jurisdiction over the documents.

25 merely to obtain the necessary custodian's declaration for their admission at trial.

1 **B. The Subpoenaed Documents Are The Product Of A Proper Investigation.**

2 It is well settled that a person has no expectation of privacy in information that is voluntarily
 3 provided to a third party. (*United States v. Miller* (1976) 425 U.S. 435 [48 L.Ed.2d 71, 96 S.Ct.
 4 1619]). Much like the current case, the *Miller* defendant objected to disclosure of his personal
 5 banking records. The High Court rejected his argument, explaining that "the Fourth Amendment
 6 does not prohibit the obtaining of information revealed to a third party and conveyed by him to
 7 Government authorities . . ." (*Id.*, at p. 443 [48 L.Ed.2d at p. 79].)

8 Following Proposition 8, the admissibility of evidence in California criminal trials depends
 9 on the federal rules of exclusion. (*In re Lance W.* (1985) 37 Cal.3d 873, 873.) Federal law does not
 10 provide a remedy for a challenged search of the third party records that are "voluntarily conveyed to
 11 the [businesses] and exposed to their employees in the ordinary course of business." (*People v.*
 12 *Pearson*, 169 Cal. App. 3d 319 (citing, *Miller*, *supra* 401 U.S. at 442))

13 DEFENDANT's argument relating to the civil regulation of credit reporting companies
 14 failed twice before Judge Tielh and once before Judge Lisk. He has presented nothing new here.
 15 Nowhere has DEFENDANT been able to cite a suppression remedy even in civil cases where his
 16 federal regulations might be applicable.

17 **C. The Subpoenas Are Not Overbroad.**

18 With the exception of conclusory statements regarding previously validated search warrants,
 19 DEFENDANT fails to explain how he believes the current subpoenas are overbroad.

20 The subpoenas relating to credit card information request only information that could
 21 identify the users, and not all transactions. Moreover, they are limited to the timeframe of
 22 DEFENDANT's charged offenses.

FILED

JUL 21 2005

KIRI TORRE
Chief Executive Officer/Clark
Superior Court of CA, County of Santa Clara
By *[Signature]* Deputy
S. CHUA

1 GEORGE W. KENNEDY,
2 DISTRICT ATTORNEY, #52527
3 THOMAS L. FLATTERY
4 DEPUTY DISTRICT ATTORNEY, # 186856
5 COUNTY GOVERNMENT CENTER, WEST WING
70 W. Hedding Street
6 San Jose, California 95110
5 Telephone: (408) 792-2629

6 Attorneys for the People

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
8 IN AND FOR THE COUNTY OF SANTA CLARA

9 PEOPLE OF THE STATE OF
10 CALIFORNIA,

NO. CC454838

11 Plaintiff,

OPPOSITION TO MOTION TO
SUPPRESS EVIDENCE (PC
1538.5) AND SET ASIDE THE
INFORMATION (PC 995)

13 HOWARD YOUNG,

DATE: July 22, 2005
TIME: 9:00 p.m.
DEPARTMENT: 29
ESTIMATED TIME : 10 min.

14 Defendant.

18 I. Introduction.

19 DEFENDANT is charged in a 31 count Information with Burglary and Grand Theft
20 resulting from 16 separate break-ins at high technology companies throughout Santa Clara County
21 over the last four years. DEFENDANT is tied to these crimes, and 11 similar out-of-county
22 burglaries, in several ways, including air travel and rental car records, e-mail and E-Bay records,
23 surveillance photos and stolen property recovered at his home in Las Vegas.

24 On July 7, 2005, DEFENDANT filed notices of motions to suppress essentially all evidence
25 in the case pursuant to Penal Code section 1538.5 and to set aside the Information pursuant to Penal

1 Code section 995. As of the writing of this response, the People have not been served with Points
2 and Authorities or declarations to support DEFENDANT's motions. However, given several
3 similar motions that were previously denied, the People anticipate that DEFENDANT will argue
4 that his Fourth Amendment rights were violated by several Search Warrants served on third party
5 businesses for their records relating to DEFENDANT.

6 If his history is a guide, DEFENDANT' will rely on: (1) outdated, pre-Prop 8 California
7 cases to suggest that he has a privacy interest in third party business records; (2) inapplicable
8 Federal regulations to suggest that some the records were produced improperly; and, (3) incorrect
9 claims that all later evidence is the fruit of those records. DEFENDANT believes that his arrest and
10 evidence gained from later search warrants were the fruit of initial warrants for his credit reports.
11 However, DEFENDANT ignores current binding authority that unquestionably confirms that
12 DEFENDANT has no privacy interest in business records held by third party companies.
13

14

15 **II. Factual and Procedural History**

16 On April 14, 2004, police detectives learned that in March, 2004 DEFENDANT had sold
17 several memory chips on E-Bay. Those chips were stolen from Google on February 28, 2004. On
18 April 15, 2004, an FBI agent in Hawaii identified DEFENDANT in a surveillance photo from a
19 burglary at Silicon Graphics from January 24, 2004. While detectives learned his name, they did
20 not know where DEFENDANT was living.

21

22 On April 22, 2004, Judge Charles Hayden signed a search warrant for DEFENDANT's E-
23 Bay records, including billing addresses and credit card numbers associated with the account. On
24 May 1, 2004, DEFENDANT burglarized Cisco Systems in San Jose, stealing over \$50,000 worth of
25 computer equipment.

1 On May 4, 2004, Judge Hayden signed search warrants for each of the three major credit
2 reporting agencies for their records relating to DEFENDANT. On May 15, 2004, DEFENDANT
3 burglarized Amgen in South San Francisco and Cisco Systems in Pleasanton. In those two cases, he
4 stole well over \$60,000 worth of computer equipment. From the credit reports, detectives learned
5 that DEFENDANT used Visa cards and a T-Mobile account. Detectives were still not able to locate
6 DEFENDANT.

7 On May 21, 2004, Judge Hayden signed search warrants for T-Mobile and Visa for their
8 business records relating to DEFENDANT. Soon thereafter, detectives learned that DEFENDANT
9 had purchased tickets to fly into San Francisco on May 28, 2004.

11 On May 28, 2004, Judge Hayden signed an arrest warrant for DEFENDANT and a Search
12 warrant for DEFENDANT's property. DEFENDANT was arrested as he came off the airplane.
13 During a search of his property, detectives found a receipt for a storage locker rented in Oakland on
14 May 15, 2004 – the day of the Amgen and Cisco burglaries. On May 28, 2004, Judge Danner
15 signed a search warrant for the storage locker. While executing Judge Danner's warrant, Detectives
16 recovered a metal folding cart that can be seen in the surveillance video from the Cisco burglary.

17 On June 2, 2004, Judge Hayden signed Search Warrants for a computer seized from
18 DEFENDANT at his arrest, as well as the for business records from the Airline Reporting
19 Corporation, Hertz and Avis. These later warrants were "piggyback warrants" and included copies
20 of the Visa affidavit that was originally filed on May 21, 2004.

22 On February 14, 2005, DEFENDANT relieved his second attorney and entered *Pro Per*
23 status.

24 On April 21, 2005, DEFENDANT filed a Motion to Traverse, Quash and Suppress
25 evidence relating to all Search Warrants executed while investigating this case. DEFENDANT

1 noticed the motion to be heard on the Department 23 pretrial calendar on April 25, 2005. Among
2 DEFENDANT's claims were that the police violated his privacy rights by using Search Warrants to
3 obtain his credit reports. On April 25, 2005, DEFENDANT filed a second, similar Motion to
4 Traverse, Quash and Suppress Evidence, again noticed for hearing on that day's pre-trial calendar.

5 On April 25, 2005, the court entered a Not Guilty plea for DEFENDANT, set a Preliminary
6 Hearing Date for June 2, 2005 and continued his motions to be heard with the Preliminary Hearing..

7 On May 10, 2005, DEFENDANT filed a Motion to Compel Discovery requesting, among
8 other things, various certifications, notices and jurisdictional agreements relating to the production
9 and use of his credit reports. DEFENDANT incorrectly interpreted 15 United States Code, section
10 1681, et. seq. as requiring those certifications.

11 On May 13, 2005, DEFENDANT filed a third Motion to Traverse, Quash and Suppress,
12 which appears to be a fairly identical copy of the motion he filed on April 25, 2005. Defendant
13 noticed this motion to be heard on Department 23's pretrial calendar on May 16, 2005.

14 On May 16, 2005, Judge Lisk denied DEFENDANT's Motion to Compel relating to the
15 certifications and agreements explaining that court authorized Search Warrants justified production.
16 DEFENDANT's suppression motion again trailed to the Preliminary Hearing.

17 On May 17, 2005, the People filed motions to release records pursuant to Subpoena Duces
18 Tecum to be heard with the Preliminary Hearing. On May 25, 2005, DEFENDANT filed a Motion
19 to Quash those subpoenas. Also on May 25, 2005, DEFENDANT filed a Supplemental Points and
20 Authorities in support of his Motion to Traverse and Suppress, which was essentially another copy
21 of his April 25, 2005 motion.

22 At the Preliminary Hearing on June 2, 2005, Judge Teihl denied DEFENDANT's motion to
23 traverse the search warrants. DEFENDANT thereafter made an oral motion to suppress evidence

1 suggesting essentially that all subsequent evidence was the fruit of the search warrants. Judge Tieh
2 also denied that motion and held DEFENDANT to answer as charged. No documents responsive to
3 the People's subpoenas had arrived in court and therefore, the motion to release trailed.

4 On June 14, 2005, DEFENDANT filed a Motion to Quash the People's subpoenas. On June
5 28, 2005, DEFENDANT filed a Supplemental Motion to Quash the same subpoenas. On July 6,
6 2005, DEFENDANT filed an Amended-Supplemental Motion to Quash the same subpoenas. On
7 July 7, 2005, DEFENDANT filed a second copy of his Amended-Supplemental Motion to Quash.
8 Also on July 7, 2005, DEFENDANT filed the two motions pursuant to Penal Code sections 995 and
9 1538.5 currently before this Court.

10
11 On July 8, 2005, Judge Lee denied DEFENDANT's Motion to Quash relating to three sets of
12 documents that had arrived in court. He did not rule on the motion with respect to three other sets
13 of documents and the People's motion to release continues to trail.

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III. Law and Argument

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A. DEFENDANT CAN NOT DEMONSTRATE A LEGITIMATE EXPECTATION OF PRIVACY IN THE RECORDS SEIZED OR THE PLACE SEARCHED.

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It is well settled that a defendant challenging a search, must first establish "a legitimate
expectation of privacy in the invaded place." (*People v. Jenkins* (2000) 22 Cal.4th 900, 972.)
Fourth Amendment rights are personal rights which may be asserted only by a defendant who
has a legitimate expectation of privacy in the invaded place or the thing searched. (*Rakas v.
Illinois* (1978) 439 U.S. 128, 133-134, 143.) To succeed on a motion to exclude evidence based
on a claim of unreasonable search and seizure, a defendant must first establish a personal,
reasonable, and legitimate expectation of privacy. (Cal. Const., art. I, § 28, subd. (d); *United*

1 their employees in the ordinary course of business." (*People v. Pearson*, 169 Cal. App. 3d 319
2 (citing, *Miller*, supra 401 U.S. at 442).

3 Here, the with respect to the search warrants for the credit reports, DEFENDANT
4 voluntarily provided information to various credit card companies. His information was available to
5 employees of those companies in the normal course of their businesses. Each of those credit card
6 companies thereafter voluntarily shared defendant's information with credit reporting companies
7 who then shared it with police.

8 Any claimed irregularities in the warrants can not create a suppression remedy where there
9 is no privacy interest.

10 Likewise, Federal Regulations cited by DEFENDANT do not create a suppression remedy.

11 B. **THERE WAS SUFFICIENT EVIDENCE TO HOLD**
12 **DEFENDANT TO ANSWER.**

13 DEFNDANT cites no failure of proof as to any charge or element. In his motion
14 pursuant to Penal Code section 995, he merely claims that "the commitment was based on
15 incompetent evidence." DEFENDANT cites no legal or factual error. Therefore, the People
16 assume that he relies on his mistaken Motion to Suppress.

17 Whereas DEFENDANT has no privacy interest in the challenged records, and the records
18 were properly produced pursuant to search warrant, DEFENDANT's motion must be denied.

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IV. Conclusion.

The People respectfully request that the Court deny DEFENDANT's Motions as he is unable to establish a Constitutionally protected privacy right in the challenged documents and the Information is supported by probable cause.

Dated: July 21, 2005

Respectfully submitted,
GEORGE W. KENNEDY
DISTRICT ATTORNEY

By Tom Flattery
Deputy District Attorney

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5 EXHIBIT
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Court of Appeal, Sixth Appellate District - No. H030682
S163787

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

HOWARD ALLEN YOUNG, Defendant and Appellant.

The petition for review is denied.

George, C.J. and Corrigan, J., were absent and did not participate.

**SUPREME COURT
FILED**

JUN 25 2008

Frederick K. Ohlrich Clerk

Deputy

CHIN

Acting Chief Justice

MARY JAMESON
AUTOMATIC APPEALS SUPERVISOR
JORGE NAVARRETE
SUPERVISING DEPUTY CLERK
SAN FRANCISCO

NATALIE ROBINSON
SUPERVISING DEPUTY CLERK
LOS ANGELES



SAN FRANCISCO 94102
RAUL WARREN BUILDING
350 McALLISTER STREET
(415) 865-7000

LOS ANGELES 90013
RONALD REAGAN BUILDING
300 SOUTH SPRING STREET
(213) 830-7570

Supreme Court of California

FREDERICK K. OHLRICH
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

February 25, 2008

Mr. Howard Young F-44590
P.O. Box 8800
Corcoran, CA 93212-8800

Re: **Petition for Review**

Dear Mr. Young:

Your documents, received February 25, 2008, in the above-entitled matter cannot be considered by this court due to lack of jurisdiction.

Our records indicate that for Case No. H030682, the Court of Appeal Sixth Appellate District filed its order on May 3, 2007. The last day we could have entertained any pleading was June 2, 2007. As for the order dated July 17, 2007 on the same case number, the last day we could have entertained any pleading was August 16, 2007. Without this jurisdiction, this court is unable to consider your request for legal relief.

Also attached, per your request, are copies of your petition for writ of habeas corpus, case numbers S156104 (filed 09/07/07) and S157535 (filed 10/25/07), both of which are still pending.

Very truly yours,

FREDERICK K. OHLRICH
Court Administrator and
Clerk of the Supreme Court

By: I. Cavanoc, Deputy Clerk

Enclosure

To the Clerk, Supreme Court of California,

Greetings and Best Wishes,

1-31-08

Enclosed are copies of the Petition for Review that I'd like filed with this court. I'm unable to acquire more copies at this time. Please send me back a filed copy. I originally filed an identical Petition for Review in July 07, but I've now been informed that this court may not have received the previous Petition for Review. Please review your records to see if you did receive the previous Petition for Review in July - Aug. 07. Also, I've now been informed that there was some action on May 7, 07 by Santa Clara County which was denied on June 13, 07, but I have not received copies of any of those documents. Please send me copies of those documents, along with the Docket Sheets of the legal actions in this court on my behalf. I've also attached a copy of the letter from Attorney J. Frank McCabe to the Petition for Review, dated August 13, 2007, which shows that I sent him a handwritten copy of the previously mentioned Petition for Review that I thought this court received. My previous request to this court regarding the previous Petition for Review has gone unanswered. Your consideration, help and response are greatly appreciated.

THANK YOU AND BEST REGARDS,

MR. HOWARD YOUNG

F-44590

P.O. Box 8800

Coopersburg, CA. 93212-8800

RECEIVED
FEB 25 2008
CLERK SUPREME COURT

E44590

P.O. Box 8800

Corcoran, CA 93212-8800

SUPREME COURT OF CALIFORNIA

The People of the State
of California,

No.

Plaintiff and Respondent

HO 30682

v.

Howard Aiken Young,

Sixth Appellate Court

Defendant and Appellant

CC 454838

Santa Clara Superior Court

Petition for Review, and

Consolidation of Cases

TO THE HONORABLE COURT,

Appellant, In Pro Se, hereby, moves this Honorable Court with this Petition for Review from the Sixth Appellate Court's denials of Appellant's Supplemental Opening Brief, Request for Rehearing, Supplemental Request for Rehearing, Writ of Prohibition and Supplemental Writ of Prohibition dated July 17, 2007 and May 3, 2007. (See Exhibit A)

Appellant requests that this Court now consider, rule and/or deem all the issues raised in the above-mentioned pleadings, exhausted at this Supreme Court of California level, so Appellant can have all those enclosed issues determined by the U.S. District Court for the Northern District of California in case # D.C. No. CV-06-00114-MJJ which the Ninth Circuit has instructed "to stay the action until the state court proceeding was completed." (See Exhibit B)

RECEIVED

FEB 25 2008

ERIK SHIBODA

Appellant previously filed a Petition for Review with this Court within 10 days of the denial of the Sixth Appellate Court's July 17 2007, but appellant has been recently informed by this Court's clerk that the previous Petition for Review was not received. (SEE EXHIBIT-C)

Appellant, hereby, requests that this Court either now review, consider and rule on all issues previously raised in the Sixth Appellate Court pleadings that appellant filed, including, but not limited to; the Writ of Prohibition, Supplemental Writ of Prohibition, REQUEST for Rehearing, Supplemental REQUEST for Rehearing and/or Supplemental Opening Brief, or that this Court deem all those issues exhausted at this Supreme Court of California level, so that they can now be heard in the U.S. District Court for the Northern District of California CASE NO. D.C. No. CV-06-00114-MJJ. Appellant lastly requests that this Court consolidate cases #S156104 and #S157535 currently pending in this Court, with this Petition for Review and they be heard, decided and/or deemed exhausted at the same time. Wherefore, Appellant prays for all relief which is just and proper.

Appellant declares under penalty of perjury that the foregoing is true and correct.

Dated: 1-31-08

Mr. R

Signature of Appellant In Pro Se

SUPREME COURT OF THE STATE OF CALIFORNIA

The People of the State
of California,

Plaintiff and Respondent,

v.

Howard Allen Young,
Defendant and Appellant

No.

HO 30682

SIXTH APPELLATE COURT

CC 454838

SANTA CLARA SUPERIOR COURT

Petition for Review

TO THE HONORABLE COURT:

Appellant, In Pro Se, hereby, moves this Honorable Court for a Petition for Review from the Sixth Appellate Court's denial filed July 17, 2007 and May 3, 2007 of the Appellant's, In Pro Se, Supplemental Opening Brief and the Appellant's REQUEST for REHEARING and SUPPLEMENTAL REQUEST for REHEARING. Appellant requests that this Court now consider and rule on those issues and/or deem them EXHAUSTED at this APPELLATE level so Appellant can move for federal HABEAS CORPUS.

Whereby, Appellant, prays for relief which is just and proper.

I S S I S N E T A N T A N T I A N A C H A M P I N I A N A

Declaration of Service By U.S. Mail

Case Name: People v Howard Allen Young

I declare that I, Howard Young, did place copies addressed below in the U.S. Mail Box here at Concourse State Prison on August 2, 2007. I am over 18 years of age. I, hereby, send to Motion to Deny ANY further Time Extensions by Respondent
(a sealed envelope with postage paid, addressed as follows:
(so served in the same envelope is Appellant's Petition for Review in California Supreme Court)

J. Frank McCabe
Attorney At Law
500 Sansome St., Suite 212
San Francisco, CA. 94111

Sixth District Appellate Program
100 North Winchester Blvd., Suite 310
Santa Clara, CA. 95050

John Killeen
Deputy Attorney General
455 Golden Gate Ave, Suite 11000
San Francisco, CA. 94102-7004

Santa Clara County Court
191 North First St.
San Jose, CA. 95113

Santa Clara County District Attorney
70 West Hedding St.
San Jose, CA. 95110

TELEPHONE (415) 397-1757

J. FRANK McCABE
ATTORNEY AT LAW
500 SANSOME STREET, SUITE 212
SAN FRANCISCO, CALIFORNIA 94111

FAX (415) 433-7258

August 13, 2007

Howard Young
F44590 3A-05/150
P.O. Box 3461
Corcoran, Ca. 93212

Re: People v. Young

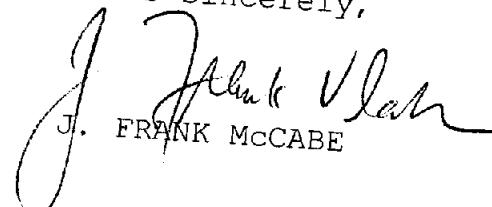
Dear Mr. Young:

I have received copies of your motion to the 6th District and your petition for review to the California Supreme Court.

I have not filed a motion to get the attorney general to file his brief because, in my experience, that does no good whatsoever. The court of appeal is very generous in granting extensions to the AG (and, usually, also to defense counsel.)

In your petition for review, you state that you want to exhaust issues so that you can "move for federal habeas corpus." I want to warn you again that, with very few exceptions, you get to file one and only one federal petition for a writ of habeas corpus, so even if the California Supreme Court denies your petition, do not file a federal petition too soon or else you may be barred from filing another petition on other issues.

Yours sincerely,


J. FRANK McCABE

Copy

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,
Plaintiff and Respondent,

v.
HOWARD ALLEN YOUNG,
Defendant and Appellant.

H030682
Santa Clara County No. CC454838

Court of Appeal - Sixth App. Dist.
APPEAL FILED
RECEIVED
RECORDED

JUL 17 2007

MICHAEL J. YERLY, Clerk
By _____
DEPUTY

BY THE COURT:

Appellant's in pro per request for rehearing from the order denying his request to file a supplemental opening brief dated May 3, 2007, is denied.

Permission to file in pro per appellant's supplemental request for rehearing received by the court on July 2, 2007, is granted. The request for a supplemental rehearing of the court's order dated May 3, 2007, is denied.

Date: JUL 17 2007

ROJAS, P.J.

P.J.

CCOPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.

FILED

MAY 3 - 2007

MICHAEL J. YEALY, Clerk

By _____ DEPUTY

THE PEOPLE,
Plaintiff and Respondent,

v.

HOWARD ALLEN YOUNG,
Defendant and Appellant.

No. H030682
(Super. Ct. No. CC454838)
Santa Clara County

BY THE COURT:

The clerk of the court is directed to file in pro per appellant's motion requesting to file a supplemental opening brief, supplemental writ of prohibition, motion for rehearing of denial of writ of prohibition and motion for a complete copy of the record, received from counsel for appellant on April 10, 2007, forthwith. The court having considered said motion and various requests made by the above named appellant hereby orders said motion and all requests made therein, denied.

The motion by counsel for appellant for permission to file a supplemental opening brief is granted and the clerk of the court shall file said supplemental opening brief received by the court on April 18, 2007, forthwith.

Time to file respondent's brief is extended to 15 days from the date of this order.

Dated MAY 3 - 2007

REINHOLD, P.J.

P.J.

COPY**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

HOWARD ALLEN YOUNG,

Defendant and Appellant.

H030682

(Santa Clara County
Super. Ct. No. CC454838)

APR 17 2008

MICHAEL J. YERLY, Clerk

DEPUTY

Defendant Howard Allen Young was convicted after jury trial of 14 counts of second degree burglary (Pen. Code, §§ 459, 460, subd. (b)),¹ 14 counts of grand theft (§§ 484, 487, subd. (a)), and one count of selling stolen property (§ 496, subd. (a)). The jury found as to three counts of grand theft that the loss exceeded \$50,000, and as to another count of grand theft that the loss exceeded \$150,000 (§ 12022.6, subds. (a)(1) & (2)). In addition, the jury found that defendant had a prior serious felony conviction for kidnapping that qualified as a strike. (§ 1170.12.) After denying defendant's *Romero*² motion, the trial court sentenced defendant to state prison for a term of 30 years, eight months.

¹ Further unspecified statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

On appeal, defendant contends: (1) the admission of evidence of four uncharged offenses under Evidence Code section 1101, subdivision (b), violated his rights to due process and a fair trial; (2) the admission of hearsay evidence of three other uncharged burglaries violated his rights to confrontation and a fair trial, and counsel rendered ineffective assistance by failing to raise an objection to the evidence on those grounds; (3) the court abused its discretion by allowing him to be impeached with all four of his prior felony convictions; (4) the standard of proof in Judicial Council of California Criminal Jury Instructions (2006) CALCRIM No. 375 violated his right to be convicted only by proof beyond a reasonable doubt; (5) the cumulative effect of the above errors denied him a fair trial and due process; and (6) imposition of an upper term sentence violated his rights to a jury trial and due process. As we find no error requiring reversal, we will affirm the judgment.

BACKGROUND

Defendant was charged by information with 16 counts of second degree burglary (§§ 459, 460, subd. (b); counts 1, 3, 6, 7, 9, 11, 13, 15, 17, 19, 21, 22, 24, 25, 27 & 30), 14 counts of grand theft of personal property valued over \$400 (§§ 484, 487, subd. (a); counts 2, 4, 5, 8, 10, 12, 14, 16, 18, 20, 23, 26, 28 & 31), and one count of selling stolen property (§ 496, subd. (a); count 29). The information further alleged as to counts 14 and 31 that the loss exceeded \$50,000 (§ 12022.6, subd. (a)(1)), and as to counts 16 and 18 that the loss exceeded \$150,000 (§§ 12022.6, subd. (a)(2), 1203.045). In addition, the information alleged that defendant had a prior serious felony conviction that qualified as a strike (§ 1170.12).

Prior to trial, the court granted defendant's motion to bifurcate trial on the alleged prior. The court granted the prosecutor's motion to admit evidence of four uncharged offenses, finding the uncharged offenses "material to the issues of identity and common plan." During trial, after defendant informed the court that he wished to testify, the court ruled that defendant's prior kidnapping and three prior second degree burglary

convictions could be used for impeachment purposes. The court also ruled, over defendant's objection on Evidence Code section 352 grounds, that the prosecutor could present evidence of three additional out-of-county uncharged burglaries as rebuttal evidence.

The prosecution's case was that, based on the testimony of witnesses, pictures taken from security surveillance videotapes and security computer records, the same person committed a series of similar burglaries and grand thefts in and around Santa Clara County between 2001 and 2004. The prosecution contended that the person who committed all of these burglaries and thefts was defendant, as defendant's airline flight and rental car records coincided with the burglaries, defendant sold on eBay some of the property that was stolen during the burglaries, he had other stolen property at his home, and he was identified as being the person seen at the scene of two burglaries at the time of those burglaries. Defendant's defense was that he traveled often for business, so it was just coincidental that his flight and car rental records coincided with the burglaries and thefts.

The Trial Evidence

Counts 1 and 2

Stephen Quan, a performance engineer for Silicon Graphics, Incorporated, (SGI) in Mountain View, was called into work on the night of Saturday, May 26, 2001, because there had been a burglary at his lab. He found pry marks on the lab door. He also found the computers inside the lab pulled out of their racks and bent open, and a supply cabinet open. Quan determined that memory cards were missing from the computers and the supply cabinet, and that new CPUs were also missing from the cabinet. The total value of the missing memory cards was about \$50,000, and each of the missing CPUs were worth about \$5,000. Quan suggested to a responding Mountain View police officer that the burglary might have been committed by a recently-laid-off employee.

The security system at SGI reported that at 8:35 a.m. on May 26, 2001, the door of the building housing the lab was forced open. Then, at 8:43 a.m., a lab door was forced open. The security surveillance video showed a tall African-American man inside the building lobby wearing a suit and a hat and carrying a white box toward the building doors.

Defendant flew from Honolulu to Los Angeles on May 23, 2001; from Los Angeles to San Francisco on May 25, 2001; from San Francisco to Los Angeles on May 27, 2001; and from Los Angeles to Honolulu on May 29, 2001. He paid for the flights with cash. He rented a vehicle from Hertz in San Francisco on May 25, 2001, and returned it on May 26, 2001, at 1:10 p.m.

Counts 3 Through 8

In September 2001, the companies Accenture, Game Change, and Novation Biosciences shared building space in Palo Alto. On Saturday, September 29, 2001, at 9:00 a.m., when Michael Stanton arrived at Game Change for work, he found the door to the Game Change server room propped open. The door had been pried open, the server was missing, and the rack where it had been was broken. On Monday, October 1, 2001, Accenture employees found that the door to their server room and other interior doors and some cabinets had been pried open and about 10 laptop computers valued at about \$13,000 were missing. A security surveillance video showed that a man in a suit and baseball cap had been in the building. He had entered through a fire exit around 7:02 a.m. on September 29, 2001, and left near the main entrance. Robert Dickinson, vice president of engineering for Novation Biosciences, found that four of their notebook computers were missing, and that hard drives, processors and the memory had been taken from their main server. The value of the notebook computers was about \$8,000, and the value of the parts taken from the server was over \$4,000.

Defendant flew from Honolulu to Los Angeles on September 26, 2001; from Los Angeles to San Francisco on September 28, 2008; from San Francisco to Los Angeles on

September 29, 2001; and from Los Angeles to Honolulu on October 8, 2001. He paid for the flights with cash. He rented a vehicle from Hertz in San Francisco on September 28, 2001, and returned it on September 29, 2001, at 3:50 p.m.

Counts 9 and 10

Around 11:00 a.m. on Saturday, December 8, 2001, Steven Okler, a security officer for Agilent Technologies in Palo Alto, noticed on a security monitor a man wearing a black suit, gloves, and a driving cap, and carrying a computer bag, inside one of their buildings. Okler walked over to that building and encountered the man outside. The man, who was approximately 6'4" tall, and who weighed between 200 and 240 pounds, was propping the door open and pushing a cart. Okler asked the man for his identification. The man said, " 'My badge is in my car,' " and started pushing the cart towards the parking garage. Okler followed the man at a distance. When the man got close to the garage, he abandoned the cart, ran to a silver Dodge Caravan, and sped away. The abandoned cart held 14 laptop computers, each worth about \$2,000, and some with cut security cables still attached; an espresso machine; and a black canvas computer bag. Inside the computer bag were a small L-shaped pry bar and cable cutters. Okler identified defendant at trial as the man he had confronted that day.

Defendant flew from Honolulu to Los Angeles on November 29, 2001, and from Los Angeles to San Francisco on November 30, 2001, and he used a credit card to pay for the flights.

Counts 11 and 12

Maria Lazarte, a systems administrator for SGI in Mountain View, found on Monday, August 12, 2002, that one of her lab doors had been pried open. She also discovered that some equipment had been moved around and boxes had been opened, and

that two new CPUs, two graphic boards, and a cart were missing from inside the lab. The total value of the missing items was about \$7,100.³

The SGI security system reported that the building door was forced open at 10:34 a.m. on Saturday, August 10, 2002. The lab door was forced open at 10:44 a.m. The security surveillance video showed an African-American man in a suit and hat in the building. The man had a bag sitting on a metal cart like those in the lab. Mountain View Police Detective Sean Thompson determined from the video that the man was about six feet tall and had a large build. SGI security officers gave Thompson a photograph of an employee named Hancock, but Thompson did not interview Hancock.

A few days earlier, on August 7, 2002, the security system reported that somebody with a terminated badge for Terence Hancock tried to access one of the buildings. Around this time, the security system was reporting a lot of false terminated badge alerts. When Leonel Dijols, a security officer, went to check the building after this alert, he saw an African-American man walking away from the building towards the parking lot. The man was about six feet tall, and weighed about 230 pounds. Dijols asked the man if he needed any help. The man replied negatively, and got into an older purple Corvette. Dijols later learned that the man he spoke to was Bill Plummer, who still works for SGI.

Defendant flew from Los Angeles to Oakland on August 9, 2002, and from Oakland to Los Angeles on August 10, 2002, and he used a credit card to pay for the flights. He rented a vehicle from Avis at Oakland on August 9, 2002, and returned it at 4:49 p.m. on August 10, 2002, and he paid for the rental with a credit card.

³ One CPU was worth about \$1,000, the other about \$1,300. The two graphic boards were each worth \$2,400.

Counts 13 and 14

Anoop Rajkumar, a lab administrator for Cisco Systems in San Jose, was notified on Sunday, October 27, 2002, around 7:00 p.m., that some of the Cisco systems were inaccessible. When he arrived at the lab, he found four servers lying on the floor with their tops removed and with some processing and memory parts missing. The value of the missing parts was approximately \$80,000. Allied Security surveillance videos showed that an exterior door had been forced open at 10:34 a.m. on Saturday, October 26, 2002, and that an African-American man later left the lab carrying a garbage can. The man was approximately 30 to 40 years old, about 5'7" tall, with a heavy build, wearing a suit, a dark baseball cap and dark shoes, and carrying a laptop bag.

Defendant flew from Honolulu to Los Angeles on October 24, 2002; from Los Angeles to Oakland on October 25, 2002; from Oakland to Los Angeles on October 26, 2002; and from Los Angeles to Honolulu on October 30, 2002. He paid for the flights with a credit card. He rented a vehicle from Avis in Oakland on October 25, 2002, and returned it on October 26, 2002 at 2:57 p.m., and he paid for the rental with the same credit card.

Counts 15 and 16

When Kirk Lim, a senior I.T. specialist with Entrust in Santa Clara, dropped by his lab on Saturday, April 12, 2003, he found one of their carts in the parking lot. He took the cart back inside the building, but did not notice anything missing. On the following Monday, when Lim returned to work, he learned that equipment was missing from the lab. Some servers had been pried opened and parts, including memory components, had been forcibly removed. Thirteen computers were affected and had to be replaced. The value of the missing items was over \$84,000.⁴ Security surveillance video showed a

⁴ The individual items that they could determine a value for were valued at \$6,817; \$12,300; \$12,300; \$12,300; \$8,140; \$12,300; \$4,120; \$4,120; and \$12,300, respectively. The other items they could not determine a value for.

person entering the building then later exiting the building with the cart, on which were two moving boxes from the lab. Yvonne Sieber, a human resources manager for the office, believed that the man in the video resembled a recently-laid-off employee. Sieber provided the man's name to the police.

Defendant flew from Honolulu to Los Angeles on April 3, 2003; from Los Angeles to Oakland on April 4, 2003; from Oakland to Los Angeles on April 5, 2003; from Los Angeles to Oakland on April 11, 2003; from Oakland to Los Angeles on April 12, 2003, and from Los Angeles to Honolulu on April 15, 2003. He paid for the flights with credit cards. He rented a vehicle from Avis at Oakland on April 11, 2003, and returned the vehicle on April 12, 2003, at 2:49 p.m., and he paid for the rental with a credit card.

Counts 17 and 18

Dennis Hughes, a facilities project manager for Portal Software, was called into work on Saturday, April 19, 2003, because the engineering data center had been broken into. Exterior and interior doors had been pried open and six servers worth about \$216,000 were missing. The security surveillance video showed a man prying open the doors around 9:15 a.m., and leaving with the servers around 9:35 a.m., on April 19, 2003. Officers found a large shoepoint in the mud outside the exterior door.

Defendant rented a vehicle from Hertz in Oakland on April 18, 2003, and returned it on April 19, 2003, at 3:30 p.m.

Counts 19 and 20

When he arrived at work on Monday, June 16, 2003, Edward Robitaille, facilities manager for Marvell Semiconductor in Sunnyvale, learned that six boxed-up servers valued at about \$7,000 were missing from shipping and receiving. Security surveillance videos showed an African-American man, who Robitaille had never seen before and who was wearing a suit and carrying a black bag, walking into the building through the loading dock on the previous Saturday morning and leaving the building with a hand

truck loaded with the boxed-up servers. From the videos Robitaille estimated that the man was about 6'1" or 6'2" tall, and weighed 215 to 220 pounds. The videos also showed a light-colored SUV that Robitaille had never seen before leaving the building parking lot shortly after the servers were removed.

Defendant flew from Los Angeles to Oakland on June 13, 2003, and from Oakland to Los Angeles on June 14, 2003, and he paid for the flights with a credit card. He rented a vehicle from Avis in Oakland on June 13, 2003, and returned the vehicle on June 14, 2003 at 3:41 p.m., and he paid for the rental with a credit card.

Count 21

In July 2003, Allied Security provided corporate security for Netscreen in Sunnyvale. On Monday, July 21, 2003, Bryan Wade from Allied Security learned that there had been a break-in at a Netscreen lab during the prior weekend. Wade found that an emergency exit door had been pried open but nothing was missing. Security surveillance videos showed that an African-American man who was over six feet tall and who was wearing a suit and a hat had been in the building around 9:45 a.m. on Saturday, July 19, 2003. The videos also showed the same man walking to a mid-size Buick in the parking lot, and then the Buick leaving after the break-in.

Counts 22 and 23

When Albert Tang, a technical marketing engineer for Cisco in San Jose, arrived at his lab on the morning of Monday, December 22, 2003, he found that two laptop computers and a video camera were missing. The camera was worth between \$5,000 and \$7,000, and the laptops were each worth about \$2,500. Tang contacted security, who determined that an exterior door had been forced open at 10:30 a.m. on Saturday, December 20, 2003, and that interior doors were also forced open. Security surveillance videos showed a man about 6'6" tall inside the building and exiting the building with one or two laptops.

Defendant flew from Los Angeles to Oakland on December 19, 2003, and from Oakland to Los Angeles on December 20, 2003, and he paid for the flights with a credit card. He rented a vehicle from Avis in Oakland on December 19, 2003, and returned the vehicle on December 20, 2003, at 7:29 p.m., and he paid for the rental with the same credit card.

Count 24

Larry Kistler, a hardware instructor at SGI in January 2004, was out of town when he received a call from SGI security telling him that his training lab had been burglarized. When Kistler returned to the lab he found that the double doors to the lab were broken and parts of a mainframe computer were broken, but nothing was missing.

The SGI security system reported that the lab door was forced open at 8:07 a.m. on Saturday, January 24, 2004. A video from the security camera Kistler had installed inside the lab showed a man whom Kistler had never seen before inside the lab at 8:11 a.m. on January 24, 2004. The building security surveillance video showed the man in the lobby walking toward the exit at 8:11 a.m. with nothing in his hands.

Defendant flew from Los Angeles to San Francisco on January 23, 2004, and from San Francisco to Los Angeles on January 24, 2004, and he paid for the flights with a credit card. He rented a vehicle from Avis in San Francisco on January 23, 2004, and returned the vehicle on January 24, 2004, at 5:12 p.m., and he paid for the rental with the same credit card.

Counts 25 and 26

Benchiao Jai, an engineer with Google in Mountain View, discovered on the morning of Monday, March 1, 2004, that one of the Google labs had been broken into. The lock on the lab door was broken and three computer servers, each worth around \$2,000, and 200 memory modules from other computers, each worth about \$200, had been removed. Jai reported the theft to security. Security officers found that the lock on the building door was broken. Security program logs indicted that the memory modules

were removed from the computers at 8:23 a.m. on Saturday, February 28, 2004. A security surveillance video showed a man prying the building door open and later exiting the building through another door carrying a box containing three Google servers. The video also showed a white SUV approaching the building moments before the forced entry and leaving approximately 90 seconds after the man left the building.

Fingerprints taken from the scene were later identified as belonging to Steven Allen Mendoza. Mendoza's driver's license printout states that he has brown hair and hazel eyes, is 5'4" tall, and weighs 180 pounds.

Defendant flew from Las Vegas to San Francisco on February 27, 2004, and from San Francisco to Las Vegas on February 28, 2004, and he paid for the flights with a credit card. He rented a vehicle from Avis in San Francisco on February 27, 2004, and returned the vehicle on February 28, 2004, at 1:59 p.m., and he paid for the rental with the same credit card. One-gigabyte memory modules like those taken from Google were found during a search of defendant's residence shortly after his arrest.

Counts 27 and 28

Gary McLeod, an engineer with Cisco Systems in San Jose, went into work on Saturday, May 1, 2004, around midmorning. When he arrived, he saw a white SUV parked close to an emergency exit. The back door of the SUV was open and an African-American man who was about six feet tall was moving a large box from a lab cart into the back of the SUV. McLeod approached the man and asked him if he could be of some help. The man was so startled that he almost dropped the box. He said that he was almost finished, so McLeod walked back to his car and watched him. The man left the cart in the parking lot and drove off. McLeod wrote down the license plate number of the SUV and sent an email to Cisco investigators about the incident. He identified defendant at trial as the man he saw.

Anthony Poulos, an engineering manager for Cisco Systems in San Jose, was notified that a large server worth about \$50,000 was missing from a lab. Security

surveillance videos showed a man inside the building on May 1, 2004, at 10:01 a.m. The man loaded a cart and pushed the loaded cart out of the building.

Defendant flew from Las Vegas to San Francisco on April 30, 2004, and from San Francisco to Las Vegas on May 2, 2004, and he paid for the flights with a credit card. He rented a vehicle from Avis in San Francisco on April 30, 2004, and returned it on May 1, 2004, at 7:10 p.m., and he paid for the rental with the same credit card.

Count 29

Elegant Networks is a family-owned business that buys and resells used Cisco network equipment. Between March 30 and April 2, 2004, Dong Nguyen, an employee of Elegant Networks, negotiated to buy some Cisco switches through eBay. The seller used the email address rsoapdish@aol.com. The seller claimed that the switches worked, so Nguyen bought two of them for \$3,450. When the switches arrived, they were missing their serial number tags. Nguyen ran a test and determined their serial numbers and also determined that the switches worked. The switches were later turned over to the police. On May 19, 2004, the same seller offered to sell Cisco routers to Elegant Networks. Nguyen never met or talked to the seller.

In early April 2004, Gil Leaño, I.T. manager for Dorado Corporation in San Mateo, learned that nine packaged Cisco switches and routers and the cart that they had been on were missing. Also missing were a couple of laptop computers. Security surveillance videos showed defendant, who did not work for Dorado, removing the cart and equipment on Saturday, March 27, 2004. Leaño provided the serial numbers of the missing parts to the police. Included in the list were the serial numbers for the two Cisco switches Elegant Network bought from rsoapdish@aol.com. The switches were each worth between \$3,000 and \$4,000.

Defendant flew from Las Vegas to Oakland on March 26, 2004, and from Oakland to Las Vegas by way of Phoenix on March 27, 2004, and he paid for the flights with a credit card. He rented a vehicle from Avis in Oakland on March 26, 2004, and returned

the vehicle on March 27, 2004, at 2:52 p.m., and he paid for the rental with the same credit card.

Counts 30 and 31

Portal Software was burglarized a second time on Saturday, August 9, 2003.⁵ The same kinds of computer parts that were taken in April 2003 were missing again after this burglary. Perry Zhu, a systems administrator for Portal, determined that the value of the items taken this time was about \$155,000. Security surveillance video showed the same man as before forcing entry around 9:03 a.m. and exiting through the same back door around 9:05 a.m.

Defendant flew from Los Angeles to Oakland on August 8, 2003, and from Oakland to Los Angeles on August 9, 2003, and he paid for the flights with a credit card. He rented a vehicle from Avis in Oakland on August 8, 2003, and returned the vehicle on August 9, 2003, at 3:50 p.m., and he paid for the rental with the same credit card.

Uncharged Acts

Lester Hellum, a corporate investigator for Sun Microsystems, testified that Sun maintains a system to track their own and customers' assets using serial numbers. Detective Alex Bouja gave him a serial number for a Sun blade server, and he determined that the server was shipped May 6, 2003, to a Sun employee in Broomfield, Colorado. Sun has no record of it ever having been resold after that. The Sun blade server with that serial number was found during a search of defendant's residence after his arrest. Sun computer memory chips were found in defendant's car during the same search. Around 7:30 a.m. on Saturday, May 17, 2003, the Sun security system for their Broomfield campus indicated that both an exterior door to one of their buildings and an interior door to a lab had been forced open. David King, a security officer, entered the building and

⁵ The first burglary, in April 2003, was the subject of counts 17 and 18.

found a large African-American man inside whom he did not recognize. The man was wearing a coat, tie, hat and gloves, and was not wearing an employee badge. King asked to see the man's badge, and the man said that it was in his vehicle. The man gave him a name but left while King was calling in to verify the information. Defendant flew from Los Angeles to Denver on May 16, 2003, and from Denver to Los Angeles on May 17, 2003, and he paid for the flights with a credit card. He rented a vehicle from Avis in Denver on May 16, 2003, and returned it on May 17, 2003, at 2:04 p.m., and he paid for the rental with the same credit card.

On Monday, December 22, 2003, employees of Siebel Systems in Emeryville reported to their security contractor that there had been a burglary at their site. Some items had been moved and damaged and a number of laptop computers were missing. Daniel Ruiz, an employee of the security contractor, reviewed the security surveillance videos and saw an unauthorized person enter the building through the receiving dock at 9:25 a.m. on Saturday, December 20, 2003, with a laptop bag, and exit the building with a Siebel equipment case at 9:35 a.m. The property tag for a laptop computer stolen during this burglary was found during a search of defendant's residence after his arrest.

On Monday, January 26, 2004, Siebel reported to the same security contractor that there had been a burglary at one building at their San Mateo site. Ruiz reviewed the security videos from that site and did not see any unauthorized entries into that building because the building's security camera was not working. Ruiz did see a man who appeared similar to the man in the December 2003 Emeryville videos attempting to enter a second building at the San Mateo site through the loading dock at 11:18 a.m. on Saturday, January 24, 2004.

Jason Sousley, an investigator with Cisco Systems in Pleasanton, was notified on Saturday, May 15, 2004, at approximately 12:15 p.m., of a break-in there. He determined that several doors had been pried open and several items, including two servers, were missing, and that one glove had been left behind. Security surveillance videos showed a

man rolling a loaded Cisco cart out of the building, and a pickup truck exiting the parking lot shortly thereafter with items in the bed of the truck. Defendant flew from Las Vegas to Oakland on May 14, 2004, and from Oakland to Las Vegas on May 15, 2004, and he paid for the flights with a credit card. He rented a Ford F-150 pickup truck from Hertz in Oakland on May 14, 2004, and returned the truck on May 15, 2004, at 4:44 p.m. The truck defendant rented looked like the one in the Cisco security video.

Detective Bouja testified that he looked into additional flights taken by defendant and additional burglaries outside Santa Clara County. He became aware of a similar suspected burglary at Oracle in Colorado Springs on February 3, 2001. Defendant flew from Los Angeles to Denver on February 2, 2001, and from Denver to Los Angeles on February 3, 2001, and he paid for the flights with cash. A similar suspected burglary occurred at Sun Microsystems in Newark, California, on August 17, 2002. Defendant flew from Los Angeles to Oakland on August 16, 2002, and from Oakland to Los Angeles on August 17, 2002, and he paid for the flights with cash. A similar suspected burglary occurred at Open Wave in Redwood City on May 3, 2003. Defendant flew from Los Angeles to San Francisco by way of Las Vegas on May 2, 2003, and from San Francisco to Los Angeles by way of Las Vegas on May 3, 2003, and he paid for the flights with a credit card.

Other Evidence

Patrick Dean, who works on and builds computers as a hobby, bought two memory chips through eBay in March 2004 from a seller who had 40 or 50 chips for sale. The chips did not work well so Dean resold them through eBay. About three weeks later, the woman he sold them to contacted him and he told her who he had bought them from.

Patrick Murphy, a botanist, bought some memory chips over eBay in March 2004, from a seller who used the email address rsoapdish@aol.com. When the first chip arrived, it did not work, so Murphy contacted the seller again. He mailed back the first chip and the seller sent a second one that did not work either. Murphy tried to resell the

second chip, but had to buy it back because it did not work for the new buyer either. He gave the second chip, the envelope in which he received it from the seller, and copies of his emails to the police. The emails said that the payment address for the seller was "Howard Young" in Los Angeles, and the return address on the envelope says "H. Young" in Las Vegas, Nevada. The invoice says, " 'Thank you again for your purchase. Bro.h.' "

Verta Tannehill, who was building a desktop computer, bought two chips over eBay in March 2004 from Patrick Dean. The chips did not work so she contacted the manufacturer, who informed her that they might be stolen. Tannehill then contacted Dean and other buyers of similar chips to find out where they got the chips. She traced sales back to somebody who used the eBay screen name "bro.h." She contacted "bro.h," asking to buy more chips and also asking where he got the chips. The responses she received on April 13, 2004, were from rsoapdish@aol.com. She gave the two chips she bought and copies of her emails to the police.

EBay fraud investigators determined that defendant registered the screen name of "bro.h" and the email address of rsoapdish@aol.com with them. At the time defendant registered with eBay, he gave them a Pearl City, Hawaii address.

Defendant was arrested at the San Francisco airport on May 28, 2004. Defendant had a black baseball cap and credit cards in his name on his person; some suits, four pairs of brown gloves, computer chips, receipts, emails to rsoapdish@aol.com, bolt cutters, a wrench, and a Hawaii license plate inside his suitcases; and a laptop computer, receipts, and various other papers inside a black laptop case. One of the receipts defendant had was for a storage locker that had been rented in Oakland on May 15, 2004. A second receipt was a FedEx shipping receipt from defendant with a Hollywood, California address to Elegant Networks in San Jose, and with a delivery date of April 5, 2004. A third receipt was a Delta shipping receipt dated March 27, 2004, for eight computers from the San Francisco airport to defendant at a Hollywood, California address. A fourth

receipt was for an Avis car rental at the San Francisco airport, out on February 27, 2004, and returned on February 28, 2004.

Officers searched the Oakland storage locker pursuant to a search warrant. There officers found a large cement pump and a chrome luggage cart. The man in the security surveillance videos from Cisco in Pleasanton on March 15, 2004, was using a similar luggage cart.

During a search of defendant's Las Vegas residence, Detective Bouja found in the garage a large, hard-plastic case like those often used to ship large computer components. A property tag from Seibel Systems was affixed to the case, and Seibel records indicated that the property tag was for a laptop computer that had been stolen from their Emeryville location. Bouja found a laptop computer inside a black bag sitting on a shelf of an entertainment center, and a Sun blade server inside the residence. Bouja gave the serial number of the Sun blade server to Lester Hellum at Sun in order to determine if the server was stolen property. Inside the residence Bouja also found emails to Bro.h and rsoapdish@aol.com relating to one-gigabyte memory modules like those stolen from Google, and brown cloth gloves. Inside a vehicle parked in the driveway of the residence were a few Sun memory chips.

Defendant testified in his own behalf. He admitted that he was convicted of three counts of second degree burglary in 1990, and that he pleaded guilty to kidnapping in 1992, but testified that he has not been convicted of a felony since then. He is married and has three children. He is 6'7" tall and weighs 265 pounds.

Defendant testified that he is the owner-operator of a business that does carpet cleaning, mold remediation, parking lot cleaning, and grease and septic tank pumping. His business is listed with the websites "Blacks in Vegas," and Pumper.com, and is a member of the International Institute of Cleaning Restoration Certification. His business base is Las Vegas, but he does not have a business license or a contractor's license there and he does work in a variety of places. He could not produce a customer list or

cancelled checks used for business supplies. He recently purchased the cement pump officers found in his storage unit in Oakland, because he wanted to expand his business. When he was arrested in San Francisco, he had bolt cutters with him that he expected to use to cut the lock off his storage unit. He had lost the keys to the lock but he wanted to pick up the cement pump on this trip.

Defendant also buys and sells items, including used computer parts, on eBay, as "Bro.h" and rsoapdish@aol.com. Some of the items he buys he uses in his business, other items he resells. He travels on weekends to pick up his purchases because he runs his business during the week. He never traveled to Santa Clara County, or visited the computer firms who were the victims of the burglaries at issue here. He usually bought computer parts from his friend Charles Brown or from Cleveland Beasley in San Francisco, and he paid for them with cash. Whenever he thought that the items he bought were stolen, he called or emailed the manufacturer with the serial numbers.

The Verdicts and Sentencing

On April 11, 2006, the prosecutor dismissed the burglary charges in counts 6 and 7, and amended count 16 to allege a taking in excess of \$50,000 rather than \$150,000. On April 14, 2006, the jury found defendant guilty of all remaining counts, and found the excess taking allegations as to counts 14, 16, 18 and 31 to be true. Following a bifurcated trial, the jury found true the allegation that defendant had a prior serious felony conviction for kidnapping that qualified as a strike. (§ 1170.12.) On September 22, 2006, the court denied defendant's *Romero* motion and sentenced him to state prison for 30 years, eight months.

DISCUSSION

Uncharged Acts

Defendant first contends that the trial court violated his rights to due process and a fair trial by admitting over his Evidence Code sections 1101, subdivision (b), and 352 objection, evidence of four uncharged burglaries: (1) at Cisco in Pleasanton on May 15,

2004; (2) at Siebel in San Mateo on January 24, 2004; (3) at Siebel in Emeryville on December 20, 2003; and (4) at Sun in Bloomfield, Colorado, on May 17, 2003. He argues the evidence was inadmissible pursuant to Evidence Code sections 1101, subdivision (b), and 352 on the issues of identity and common plan because the burglaries were not distinctive, the evidence took substantial jury time, and he did not suffer any convictions as a result of the burglaries.

Under Evidence Code section 1101, subdivision (b), evidence of uncharged acts by the defendant is admissible to prove any issue in dispute, including identity or common design or plan, but not criminal disposition. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393; *People v. Lewis* (2001) 25 Cal.4th 610, 636-637 (*Lewis*).) In establishing a common design or plan, the evidence of uncharged acts “must demonstrate ‘not merely a similarity in the results, but such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations.’ [Citation.]” (*Ewoldt, supra*, 7 Cal.4th at p. 402.) “To establish the existence of a common design or plan, the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual.” (*Id.* at p. 403.) To prove identity, however, “[t]he greatest degree of similarity is required.” (*Ibid.*) “[T]he uncharged misconduct and the charged offense must share common features that are sufficiently distinctive so as to support the inference that the same person committed both acts. [Citation.] ‘The pattern and characteristics of the crimes must be so unusual and distinctive as to be like a signature.’ [Citation.]” (*Ibid.*; see also, *People v. Kipp* (1998) 18 Cal.4th 349, 369-370 (*Kipp*).)

The court may exclude evidence of uncharged acts under Evidence Code section 352 if its probative value is substantially outweighed by an undue prejudicial effect or if its admission will necessitate undue consumption of time. On appeal, the trial court’s determination of this issue, being essentially a determination of relevance, is reviewed for

abuse of discretion. (*Kipp, supra*, 18 Cal.4th at p. 369; *Lewis, supra*, 25 Cal.4th at p. 637.)

The uncharged burglaries were relevant here to show common design or plan and identity when taken in connection with evidence of the charged burglaries. Evidence of the charged burglaries showed that defendant repeatedly flew into the Bay Area on a Friday, rented a vehicle and, before returning the vehicle on Saturday, gained unauthorized entry into a closed computer company in Santa Clara County while wearing a suit, hat, and gloves, and stole computers and computer parts, some of which he sold on eBay. Defendant was identified at trial by two witnesses as the man they saw outside burglarized businesses at the time those businesses were burglarized. When defendant was arrested he had suits, gloves, a cap, bolt cutters, a wrench, and paperwork related to his travel and sales on eBay with him, and computer parts at his home like those stolen during some charged burglaries.

The four uncharged burglaries at issue here were relevant to the extent they were substantially similar to the charged burglaries. (*People v. Rivera* (1985) 41 Cal.3d 388, 392-393.) The uncharged burglaries occurred at computer companies on Saturdays when the businesses were closed, after defendant had flown into an area airport and rented a vehicle but before the vehicle was returned. Computers and computer parts were taken during the burglaries, and security surveillance videos showed that the burglaries involved the unauthorized entry of an African-American man wearing a coat, hat and gloves. In addition, defendant had computer parts at his home shortly after his arrest that were taken during some of the uncharged burglaries.

The trial court found that “the characteristics common in both the charged and uncharged act[s] are substantial and distinctive,” and that “the evidence regarding these uncharged acts is material to the issues of identity and common plan.” The court further found “[w]ith respect to the [Evidence Code section] 352 analysis,” “that the probative value of the evidence regarding these uncharged acts is not substantially outweighed by

the prejudicial effect. The jury will already hear about more than a dozen commercial burglaries. . . . [¶] Therefore, the evidence regarding these four additional uncharged acts would not be prejudicial and would be highly probative. It will not take an undue consumption of time." Moreover, during trial and at the prosecutor's request, the court instructed the jury on the limited purpose of the uncharged acts evidence each time a witness testified regarding that evidence.

We agree with the trial court that the evidence was highly probative and that it did not take an undue consumption of time given the 16 charged burglaries. That defendant had not suffered convictions based on the uncharged acts was only one factor for the trial court to consider in assessing prejudice. "'The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.' [Citations.] 'Rather, the statute uses the word in its etymological sense of "prejudging" a person or cause on the basis of extraneous factors. [Citation.]' [Citations.]' (*People v. Zapien* (1993) 4 Cal.4th 929, 958.)

We find that the trial court did not abuse its discretion in admitting the evidence of the four uncharged burglaries on the issues of common design or plan and identity. Accordingly, defendant has not shown that he was denied due process or a fair trial. (See *Estelle v. McGuire* (1991) 502 U.S. 62, 68-72.)

Defendant further contends that the court's admission of hearsay evidence of three additional uncharged burglaries violated his rights to confrontation and to a fair trial, and that his counsel rendered ineffective assistance by failing to object to the evidence on these grounds. The burglaries were: (1) at Oracle in Colorado Springs on February 3, 2001; (2) at Sun in Newark on August 17, 2002; and (3) at Open Wave in Redwood City on May 3, 2003. Defendant argues that the admission of evidence of these burglaries based on the hearsay evidence of police reports was prejudicial because it suggested

defendant committed additional burglaries based only on his flights to the areas where the burglaries occurred.

Prior to defendant's testimony, Detective Bouja testified during his cross-examination that defendant's airline flight records showed that he had taken flights other than those that coincided with the charged counts. Outside the presence of the jury, the prosecutor sought to rebut that testimony by introducing additional flight records which coincided with three similar out-of-county burglaries. The prosecutor argued that defendant had been charged with those burglaries and that he would be facing those charges after this trial. Defense counsel opposed the request on Evidence Code section 352 grounds, arguing that the evidence was prejudicial because it suggested based only on defendant's flight records that he committed additional burglaries. Defense counsel did not contend that admission of the evidence would violate defendant's rights to confrontation and to a fair trial. The court ruled that "it's an appropriate area to allow the People to go into. I think it's an area that you questioned the detective, and I think the People have a right to follow-up." Detective Bouja testified to the three out-of-county burglaries during redirect questioning, and defense counsel cross-examined the detective about this testimony during recross-examination.

"To prevail on a claim of ineffective assistance of counsel, the defendant must show counsel's performance fell below a standard of reasonable competence, and that prejudice resulted. [Citations.] When a claim of ineffective assistance is made on direct appeal, and the record does not show the reason for counsel's challenged actions or omissions, the conviction must be affirmed unless there could be no satisfactory explanation. [Citation.] Even where deficient performance appears, the conviction must be upheld unless the defendant demonstrates prejudice, i.e., that ' ' 'but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the

outcome.’”’ [Citations.]” (*People v. Anderson* (2001) 25 Cal.4th 543, 569; see also *Strickland v. Washington* (1984) 466 U.S. 668, 687-688.)

“‘Whether to object to inadmissible evidence is a tactical decision; because trial counsel’s tactical decisions are accorded substantial deference [citations], failure to object seldom establishes counsel’s incompetence.’ [Citation.] ‘Generally, failure to object is a matter of trial tactics as to which we will not exercise judicial hindsight. . . . A reviewing court will not second-guess counsel’s reasonable tactical decisions.’ [Citation.]” (*People v. Riel* (2000) 22 Cal.4th 1153, 1185.) “‘[I]n the heat of a trial, defense counsel is best able to determine proper tactics in the light of the jury’s apparent reaction to the proceedings.’” (*Id.* at p. 1197.) Thus, “where counsel’s trial tactics or strategic reasons for challenged decisions do not appear on the record, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel’s acts or omissions. [Citations.]” (*People v. Weaver* (2001) 26 Cal.4th 876, 926.)

Detective Bouja testified that airline records showed that there were many flights taken by defendant in addition to the ones coinciding with the burglaries in Santa Clara County. Bouja further testified that three of the additional flights coincided with burglaries outside Santa Clara County that were similar to the ones in Santa Clara County. The evidence was presented in an attempt to rebut defendant’s claim that, because he often flew into the Bay Area on weekends to pick up items he had purchased, it was just coincidental that his flights coincided with the Santa Clara County burglaries. Defense counsel was allowed to cross-examine Bouja about what made these three out-of-county burglaries similar to the Santa Clara County burglaries, and Bouja testified that his opinion as to the similarities was based on the police reports regarding the out-of-county burglaries.

We conclude that, even if the evidence of the three additional burglaries had been excluded, there is no reasonable probability that the result of the proceeding would have

been different. Detective Bouja's testimony regarding these three burglaries and defendant's coinciding flights did not take an undue consumption of time, and the testimony regarding the three additional flights was based on the same records as were the flights coinciding with the Santa Clara County burglaries. In addition, there was overwhelming evidence linking defendant to the numerous Santa Clara County burglaries and thefts. Accordingly, defendant has not shown that he was prejudiced by his counsel's failure to object to admission of the evidence of the three additional burglaries on the grounds that it would deny defendant his rights to confrontation and a fair trial. (*People v. Anderson, supra*, 25 Cal.4th at p. 569; *Strickland v. Washington, supra*, 466 U.S. at pp. 687-688.)

Impeachment with Priors

Defendant contends that the trial court abused its discretion when it allowed the prosecution to impeach him with all four of his prior felony convictions. Three of the prior convictions were for second degree burglary, and the fourth was for kidnapping. Defendant argues that all four of the convictions were remote in time, three were for the same offense as the charged offense, and the fourth was for the very serious offense of kidnapping. He urges this court to find that it would have been sufficient for the trial court to have allowed impeachment with only two of the prior convictions.

Article I, section 28, subdivision (f), of the California Constitution provides in pertinent part that “[a]ny prior felony conviction of any person in any criminal proceeding . . . shall subsequently be used without limitation for purposes of impeachment . . . in any criminal proceeding.” (See also, Evid. Code, § 788.) However, a trial court has discretion to exclude a prior felony conviction under Evidence Code section 352 if it finds the probative value of such conviction is substantially outweighed by its prejudicial effect. (*People v. Clair* (1992) 2 Cal.4th 629, 654.) “The rule is settled that the trial court’s discretion to exclude or admit relevant evidence under Evidence Code section 352 ‘is as broad as necessary to deal with the great variety of factual

situations in which the issue arises, and in most instances the appellate courts will uphold its exercise whether the conviction is admitted or excluded.' [Citation.]" (*People v. Kwolek* (1995) 40 Cal.App.4th 1521, 1532; see also, *People v. Ballard* (1993) 13 Cal.App.4th 687, 695.)

In performing an Evidence Code section 352 analysis the trial court is to consider the following factors: (1) whether the prior conviction " 'rest[s] on dishonest conduct' "; (2) the " 'nearness or remoteness of the prior conviction' "; (3) whether the " 'prior conviction is for the same or substantially similar conduct for which the accused is on trial' "; and (4) " 'what the effect will be if the defendant does not testify out of fear of being prejudiced because of impeachment by prior convictions.' " (*People v. Beagle* (1972) 6 Cal.3d 441, 453 (*Beagle*)).

First, we disagree with defendant's assertion that the remoteness of his priors favored their exclusion. Cases have concluded that convictions of up to 20 years, while remote, may have probative value for impeachment purposes. (See e.g., *People v. Massey* (1987) 192 Cal.App.3d 819, 825; *People v. Burns* (1987) 189 Cal.App.3d 734, 737-738.) Here, defendant's most recent prior conviction was in 1992, he was sentenced to prison as a result of the conviction, he was released on parole in 1993, and the conduct underlying the charged offenses began in 2001.

Also, "[t]here is no steadfast rule regarding the precise number of prior convictions which may be admitted in a particular case. '[W]hether or not more than one prior felony should be admitted is simply one of the factors which must be weighed against the danger of prejudice. [Citation.]' [Citation.] [¶] Prior convictions for the identical offense are not automatically excluded. 'The identity or similarity of current and impeaching offenses is just one fact to be considered by the trial court in exercising its discretion.' [Citation.]" (*People v. Green* (1995) 34 Cal.App.4th 165, 183 (*Green*)). In *Green*, where the defendant was charged with unlawful vehicle taking (Veh. Code, § 10851, subd. (a)), the appellate court held that it would not be an abuse of discretion to

allow the prosecution to impeach the defendant with six prior auto theft convictions, reasoning that “a series of crimes may be more probative than a single crime.” (*Green, supra*, 34 Cal.App.4th at p. 183.) Here, the trial court properly found that to preclude the prosecution from impeaching defendant with his three prior second degree burglary convictions along with his prior kidnapping conviction would have given defendant a “false aura of veracity.” (*People v. Beagle, supra*, 6 Cal.3d at p. 453.) We will not disturb the trial court’s exercise of discretion in this case.

CALCRIM No. 375

Defendant contends that the trial court erred by instructing the jury pursuant to CALCRIM No. 375 that the prosecution’s burden of proving the uncharged offenses was by a preponderance of the evidence.⁶ Defendant argues that the instruction is constitutionality defective in light of *Cunningham v. California* (2007) 549 U.S. ____ [127 S.Ct. 856] (*Cunningham*), in that it allowed the jury to find that he is the person who

⁶ The court instructed the jury pursuant to CALCRIM No. 375 as follows: “The People presented evidence that the defendant committed other offenses that were not charged in this case. [¶] You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged offenses/acts. Proof by a preponderance of the evidence is a different burden of proof than proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true. [¶] If the People have not met this burden, you must disregard this evidence entirely. [¶] If you decide that the defendant committed the uncharged offenses/acts, you may, but are not required to, consider that evidence for the limited purpose of deciding whether or not: [¶] The defendant was the person who committed the offenses alleged in this case. [¶] The defendant had a plan or scheme to commit the offenses alleged in this case. [¶] In evaluating this evidence, consider the similarity or lack of similarity between the uncharged offenses or acts and the charged offenses. [¶] Do not consider this evidence for any other purpose except for the limited purpose of identity and common plan. [¶] Do not conclude from this evidence that the defendant has a bad character or is disposed to commit crime. [¶] If you conclude that the defendant committed the uncharged offenses, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the charged offenses. The People must still prove each element of every charge beyond a reasonable doubt.”

committed the charged offenses using a standard of proof lower than beyond a reasonable doubt.

Defendant acknowledges that our Supreme Court has rejected a similar argument regarding CALJIC No. 2.50.1. (See *People v. Medina* (1995) 11 Cal.4th 694, 762-764 (*Medina*); *People v. Carpenter* (1997) 15 Cal.4th 312, 380-383 (*Carpenter*).) In *Medina*, the court held that CALJIC No. 2.50.1 is a correct statement of the law. “[T]he facts tending to prove the defendant’s other crimes for purposes of establishing his criminal knowledge or intent are deemed mere ‘evidentiary facts’ that need not be proved beyond a reasonable doubt as long as the jury is convinced, beyond such doubt, of the truth of the ‘ultimate fact’ of the defendant’s knowledge or intent. [Citation.]” (*Medina, supra*, 11 Cal.4th at p. 763.) In *Carpenter*, after discussing the conflicting authority on the issue of the standard of proof for other crimes evidence, including *Medina*, the court stated that it would “adhere to the preponderance standard and disapprove any language suggesting the clear and convincing evidence standard.” (*Carpenter, supra*, 15 Cal.4th at p. 382.)

The version of CALJIC No. 2.50.1 considered in *Medina* is similar in all material respects to CALCRIM No. 375 as given here in its explanation of the burden of proof. There is no material difference in the manner in which each of the instructions allows the jury to conclude from the prior conduct evidence that defendant was the person who committed the offenses alleged in this case and/or that defendant had a plan or scheme to commit the offenses alleged. CALCRIM No. 375 cautions the jury that it is not required to draw these conclusions and, in any event, that such a conclusion is insufficient, alone, to support a conviction. Based on *Medina* and *Carpenter*, we therefore reject defendant’s contention that CALCRIM No. 375 violated his due process rights. (Cf. *People v. Cromp* (2007) 153 Cal.App.4th 476, 480; see also *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Cumulative Error

Defendant contends that the cumulative effect of the above errors so infected the trial with unfairness as to make his conviction a denial of due process. Our Supreme Court has recognized that “a series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error.” (*People v. Hill* (1998) 17 Cal.4th 800, 844.) However, as we discussed above, we find that the trial court did not err or abuse its discretion in admitting evidence of uncharged acts, in allowing impeachment of defendant with his prior convictions, or in instructing the jury. Further, we find that defendant was not prejudiced by any alleged ineffective assistance of counsel and that no cumulative error has been shown.

Sentencing Error

At sentencing, the court chose count 16 (grand theft, §§ 484, 487, subd. (a)) as the principal term, and imposed the upper term of six years, which was doubled pursuant to the Three Strikes law (§ 1170.12). The court stated that it chose the upper term “[b]ecause of the defendant’s extensive criminal history, the prolonged scope of the instant three-year crime spree, and the [manner] in which these crimes were carried out, which indicates extensive planning and sophistication; moreover, items of great monetary value were taken.” The probation report states that defendant’s prior criminal history includes three convictions for second degree burglary, and one conviction each for kidnapping, intimidation of a witness, assault with a deadly weapon, and possession of an unlicensed firearm. Defendant was sentenced to state prison in 1992 for the kidnapping and burglary convictions. In addition, defendant has outstanding warrants for burglary charges in San Mateo and Alameda counties.

Defendant contends that the imposition of the upper term violated the federal Constitution because the court relied on factors not found true beyond a reasonable doubt by a jury. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 (*Apprendi*); *Blakely v.*

Washington (2004) 542 U.S. 296, 303 (*Blakely*); *Cunningham, supra*, 127 S.Ct. at p. 868.)

In *Apprendi*, the United States Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” (*Apprendi, supra*, 530 U.S. at p. 490.) The *Blakely* court further considered the issue and determined that “the ‘statutory maximum’ for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of facts reflected in the jury verdict or admitted by the defendant.” (*Blakely, supra*, 542 U.S. at p. 303, italics omitted.) In *Cunningham*, the court concluded that under California’s determinate sentencing law the middle term is the “statutory maximum” for *Apprendi* purposes. (*Cunningham, supra*, 127 S.Ct. at p. 868.) The court held that, by allowing imposition of an upper term sentence based on aggravating circumstances found solely by the judge, California’s determinate sentencing law “violates *Apprendi*’s bright-line rule” (*ibid.*), and that the upper term may be imposed only if the factors relied upon comport with the requirements of *Apprendi* and *Blakely*. (*Cunningham, supra*, 127 S.Ct. at p. 871.)

Subsequent to *Cunningham*, in *People v. Black* (2007) 41 Cal.4th 799, at page 816, our Supreme Court held that “imposition of the upper term does not infringe upon the defendant’s constitutional right to jury trial so long as one legally sufficient aggravating circumstance has been found to exist by the jury, has been admitted by the defendant, or is justified based upon the defendant’s record of prior convictions.” In imposing the upper term in the case before us, the trial court relied in part on defendant’s “extensive criminal history.” In addition to the prior kidnapping conviction that was used to double defendant’s sentence under the Three Strikes law, defendant had three prior second degree burglary convictions as well as convictions for intimidation of a witness, assault with a deadly weapon, and possession of an unlicensed firearm. Thus, this case falls under the “prior conviction” exception recognized in *Apprendi*, *Blakely*, and

Cunningham. (*People v. Black, supra*, 41 Cal.4th at p. 818; see also, *People v. Thomas* (2001) 91 Cal.App.4th 212, 216-223; *Apprendi, supra*, 530 U.S. at p. 490; *Blakely, supra*, 542 U.S. at p. 301; *Cunningham, supra*, 127 S.Ct. at p. 868.)

The prior conviction exception derives from the United States Supreme Court's opinion in *Almendarez-Torres v. United States* (1998) 523 U.S. 224. In that case, the court concluded that the fact of a prior conviction was not an element of the charged offense and, thus, need not be charged in the indictment even though it may be used to increase the defendant's maximum penalty. (*Id.* at pp. 226-227, 240-247.) At this time, *Almendarez-Torres* is controlling law and this court is bound by it. (*Auto Equity Sales, Inc. v. Superior Court, supra*, 57 Cal.2d at p. 455.) Therefore, we find that defendant's right to a jury trial was not violated by the trial court's imposition of the upper term sentence in this case. (*People v. Black, supra*, 41 Cal.4th at pp. 816, 820.)

DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MCADAMS, J.

People v. Young
H030682

CALIFORNIA APPELLATE COURTS

Case Information



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Case Summary Docket Scheduled Actions Briefs
Disposition Parties and Attorneys Trial Court

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Docket (Register of Actions)

Definitions

The People v. Young
Case Number H030682

clc

Date	Description	Notes
10/03/2006	Notice of appeal lodged/received (criminal).	
10/03/2006	Counsel appointment order filed.	SDAP apptd as cnsl for applt
10/04/2006	Court reporter extension granted.	Reporter: Fontana, Irene (001838). Deadline extended to: 12/11/06.
10/05/2006	Notice to reporter to prepare transcript.	Amended ntce to ctrrs dtd 10/4/06 to reflect that the ctrr for 8/12/05 was ctrr Hunter & not ctrr Pendergraft (Note: Minute Order was incorrect) (Note: Ctrr Pendergraft is deleted from ctrr scrn)
10/06/2006	Court reporter extension granted.	Reporter: Johnson, Cindi (010125). Deadline extended to: 11/13/06. per signed acknowledgment
10/06/2006	Court reporter extension granted.	Reporter: Mohr, Cindy (004450). Deadline extended to: 11/13/06. per signed acknowledgment
10/10/2006	Notice to reporter to prepare transcript.	Amended ntce to ctrrs dtd 10/6/06 (Note: Amended to add date of 4/18/06)
10/11/2006	Court reporter extension granted.	Reporter: Vaughan, Susan (009673). Deadline extended to: 11/13/06. Per signed acknowledgment
10/11/2006	Court reporter extension granted.	Reporter: Hunter, Marcia (002801). Deadline extended to: 11/13/06. per signed acknowledgment
10/18/2006	Recommendation of counsel by SDAP filed.	J. Frank McCabe, Esq., is assctd as cnsl for applt
10/24/2006	Telephone conversation with:	Laura at appeals; Ctrr Pendergraft's tx is in
11/13/2006	Telephone conversation with:	csr, Vaughan is sending out a ext. of time req.

11/14/2006	Telephone conversation with:	Joyce, csr's Mohr and Johnson has handed in transcript, but Hunter has not.
11/15/2006	Telephone conversation with:	Laura at appeals section; Ctrr Hunter's tx is in
11/17/2006	Court reporter extension granted.	CSR: Vaughan, Susan A (9673) Extended Due Date: 12/11/2006
12/08/2006	Telephone conversation with:	Laura at appeals section; Ctrr Fontana's tx is in
12/12/2006	Telephone conversation with:	Laura at appeals section; Ctrr Vaughan has not turned in her txs
12/12/2006	Osc issue on court reporter re: unfiled record.	csr Vaughan for Csr Vaughan (not: hearing set for January 3, 2007)
12/18/2006	Telephone conversation with:	crr Vaughn she will have rt in by wed 12/27/06.
12/28/2006	Telephone conversation with:	Laura she states ctrr Vaughn has turned in
01/02/2007	Order filed.	Csr Vaughan now having submitted her rt the court will hereby discharge the osc issued 12/12/06
01/04/2007	Mail returned, unable to forward.	Susan Vaughan
01/05/2007	Notice of completion of transcripts received/filed.	Re record on appeal
01/05/2007	Record on appeal filed.	Call Laura if not rcvd C-6; R-21 (Note: Vol. 2 of RT is a sealed Marsden Hrg tx)
01/05/2007	Probation report filed.	
01/05/2007	Filed document entitled:	1 volume of Master Index re Reporter's transcripts on appeal
01/05/2007	Marsden transcript filed*****	R-3 (In sealed envelopes); C-1 (Marsden hearing Motion in 1 sealed envelope)
01/05/2007	Sealed document filed*****	1 sealed envelope containing sealed order re appointment of investigator (Note: Item not distributed to any party)
01/05/2007	Record in box.	Record on appeal is in two (2) boxes
01/05/2007	Certificate filed of:	Ctrr Robin Pendergraft dtd 10/4/06 indctng that she was not the ctrr for procs of 8/12/05 in this matter (See certificate)
02/07/2007	Granted - extension of time.	
03/09/2007	Granted - extension of time.	
04/02/2007	Appellant's opening brief.	

04/04/2007	Note:	Applt's pro per supplemental opening brief routed to SDAP this day
04/10/2007	Request filed to:	By SDAP staff atty to file applt's in pro per supplemental opening brief (TCT for order)
04/10/2007	Received document entitled:	Appellant's in pro per supplemental opening brief (TCT for order)
04/18/2007	Motion filed.	By cnsl for applt for permission to file supplemental opening brief (TCT for order)
04/18/2007	Received document entitled:	Appellant's Supplemental opening brief (TCT w/mtn for order)
05/03/2007	Order filed.	The clerk of the court is directed to file in pro per appellant's motion requesting to file a supplemental opening brief, supplemental writ of prohibition, motion for rehearing of denial of writ of prohibition and motion for a complete copy of the record, received from counsel for appellant on April 10, 2007, forthwith. The court having considered said motion and various requests made by the above named appellant hereby orders said motion and all requests made therein, denied. The motion by counsel for appellant for permission to file a supplemental opening brief is granted and the clerk of the court shall file said supplemental opening brief received by the court on April 18, 2007, forthwith. Time to file respondent's brief is extended to 15 days from the date of this order. (CLR)
05/03/2007	Supplemental brief filed by:	(See crt's order-event #530)
05/03/2007	Filed document entitled:	Appellant's in pro per motion rqstng to file a supp opng brf, supp wrt of prohibition, etc., rcvd frm cnsl for applt on 4/10/07 (see order-event #530)
05/18/2007	Granted - extension of time.	
05/21/2007	Received document entitled:	Appellant's in pro per rqst for rehearing from denial of rqst to file supp AOB, etc. (TCT for permission to file)
05/25/2007	Request filed to:	By appellant for rehearing from denial of rqst for lve to file applt's in pro per supplemental opening brief (Note: Permission to file granted this day)
06/14/2007	Modified criminal address.	Per applt's ltr dtd 6/8/07 w/rqst for cpy of crt's order his rqst for rehearing (Crim/address modified accrdngly)
06/18/2007	Granted - extension of time.	2nd
07/02/2007	Received document entitled:	Applt's in pro per supplemental request for rehearing (TCT for permission to file)
07/16/2007	Requested - extension of time	By rspdt to 8/16/07 to file RBF (3rd rex-TCT for order)

07/17/2007	Filed document entitled:	Appl's in pro per supplemental request for rehearing (Note: Permission to file granted this day)
07/17/2007	Order filed.	Appl's in pro per rqst for rhrg from the order dnyng his rqst to file a supp opng brf dtd 5/3/07 is denied; Permission to file in pro per appl's supp rqst for rhrg rcvd by the crt on 7/2/07, is granted; The rqst for a supp rhrg of th crt's ordr dtd 5/3/07, is denied (CLR)
07/19/2007	Granted - extension of time.	

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EXHIBIT

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IN THE COURT OF APPEAL
FOR THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. H030682
)	
Plaintiff and Respondent,	)	[Santa Clara County Superior Court No. CC 454838]
)	
v.)	
)	
HOWARD ALLEN YOUNG,)	
)	
Defendant and Appellant.)	
)	

ON APPEAL FROM A JUDGMENT
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
HON. ANDREA Y. BRYAN, JUDGE

SUPPLEMENTAL OPENING BRIEF FOR APPELLANT

J. FRANK McCABE (SBN 48246)
500 Sansome Street, Suite 212
San Francisco, California 94111
Telephone: (415) 397-1757

Counsel for Appellant Young
By Appointment of the Court of
Appeal Under the Sixth District
Appellate Program's
Independent-Case System

TABLE OF AUTHORITIES

CASES

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<u>United States v. DeCoster</u> (D.C. Cir. 1973) 487 F.2d 1197	3
<u>Wiggins v. Smith</u> (2003) 539 U.S. 510	3

STATUTE

Evidence Code section 352	2
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CONSTITUTIONAL

California Constitution, article I, section 15	2
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IN THE COURT OF APPEAL
FOR THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF	)	NO. H030682
CALIFORNIA,)	
	)	[Santa Clara County
Plaintiff and	)	Superior Court
Respondent,	)	No. CC 454838]
)	
v.)	
)	
HOWARD ALLEN YOUNG,)	
)	
Defendant and)	
Appellant.)	
)	

APPELLANT'S SUPPLEMENTAL BRIEF

Appellant Howard Allen Young submits the following
brief to supplement his opening brief, filed April 2, 2007:

ARGUMENT

APPELLANT WAS DEPRIVED OF HIS
CONSTITUTIONAL RIGHT TO THE EFFECTIVE
ASSISTANCE OF COUNSEL AT TRIAL BECAUSE
COUNSEL FAILED TO OBJECT ON HEARSAY,
SIXTH AMENDMENT OR DUE PROCESS GROUNDS
TO THE ADMISSION OF THREE ADDITIONAL
UNCHARGED BURGLARIES

A. Procedural History.

In Argument II. at pp. 30-34 of his opening brief,
appellant argued that the trial court's admission of hearsay
evidence of three additional uncharged burglaries, inferentially
committed by appellant, violated his federal and state

constitutional rights to confrontation and to a fair trial, requiring the reversal of his judgment of conviction.

However, although appellant's trial counsel objected to this evidence on Evidence Code section 352 grounds (14 RT 1346-47), it does not appear that he objected on the ground that the proffered evidence constituted hearsay, or that admission of the evidence violated appellant's Federal and State Constitutional right of Confrontation or his due process right to a fair trial. Thus, this Court may conclude that, because of the absence of an objection on these grounds, appellant has waived his right to present this argument on appeal.

Therefore, appellant Young now argues that counsel's failure to object on the above-stated grounds constitutes prejudicial ineffective assistance of counsel.

B. Counsel's Failure To Object To The Court's Admission Of Hearsay Evidence On Hearsay And Constitutional Grounds Constitutes Ineffective Assistance Of Counsel.

Under both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution, a criminal defendant has the right to the assistance of counsel. "The ultimate purpose of this right is to protect the defendant's fundamental right to a trial that is both fair in its conduct and reliable in its result." (People v. Ledesma (1987) 43 Cal.3d 171, 215.) This right "entitles the

defendant not to some bare assistance but rather to effective assistance. Specifically, it entitles him to 'the reasonably competent assistance of an attorney acting as his diligent conscientious advocate.' (Ibid., quoting United States v. DeCoster (D.C. Cir. 1973) 487 F.2d 1197, 1202; italics in original.)

In order to obtain relief on the ground of ineffective assistance of counsel, appellant must establish two components: First, that trial counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates. Second, he must establish that there is a reasonable probability that but for counsel's errors the result of the case would have been different. (Wiggins v. Smith (2003) 539 U.S. 510, 534; Strickland v. Washington (1984) 466 U.S. 668, 687; People v. Anderson (2001) 25 Cal.4th 543, 569.)

The performance of appellant Young's counsel fell below this constitutional standard.

The failure of defense counsel to make objections is generally a matter of trial tactics, but the fact that appellant's trial counsel did strongly object to the admission of the evidence but on insufficient grounds "refutes any inference that he was pursuing some tactical advantage...." (People v. Asbury (1985) 173 Cal.3d 362, 365-366; accord, In re Jones (1996) 13 Cal.4th 552, 571-573.) There is absolutely no reason why

counsel, having objected on one ground, would not have objected on meritorious grounds.

C. Appellant Was Prejudiced By His Counsel's Ineffectiveness.

Counsel's omission prejudiced appellant and requires that his judgment of conviction be reversed because there is a reasonable probability that, absent counsel's omission, the result of the case would have been different. (Strickland v. Washington, supra, 466 U.S. at p. 687; People v. Ledesma, supra, 43 Cal.3d at pp. 215-218.) A reasonable probability is a "probability sufficient to undermine confidence in the outcome." (Strickland, supra, at p. 694.) Strickland "requires a significant but something-less-than-50 percent likelihood of a more favorable verdict." (People v. Howard (1987) 190 Cal.App.3d 41, 48.)

This standard is clearly met in the case at bench. Appellant suggests that, as in Asbury, supra, had the proper objection been raised, the court "cannot say that a determination more favorable to the defendant would not have resulted. (People v. Fosselman (1983) 33 Cal.3d 572, 574.)" (173 Cal.App.3d at p. 366.)

Appellant was prejudiced for the reasons discussed at pp. 27-29 and 34 of the opening brief. The prosecutor emphasized burglaries other than those charged in the instant case in his closing argument. Moreover, the case was a close one, as

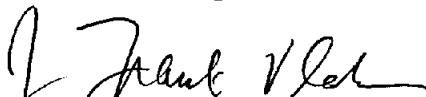
evidenced by three jury questions during deliberations, and by
the fact that those deliberations extended over parts of four
days. It cannot be said that a determination more favorable to
appellant would not have resulted if officer Bouja's hearsay
testimony of additional burglaries, clearly inadmissible under
Crawford v. Washington (2004) 541 U.S. 36, and People v. Cage
(2007) ____ Cal.4th ____, 07 C.D.O.S. 3682, had been excluded.

CONCLUSION

For the foregoing reasons and the reasons discussed in
his opening brief, appellant Howard Allen Young respectfully
requests this Court to reverse his judgment of conviction.

DATED: April 16, 2007.

Respectfully submitted,



J. FRANK McCABE
Counsel for Appellant Young
Under the Sixth District Appellate
Program's Independent-Case System

IN THE COURT OF APPEAL
FOR THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

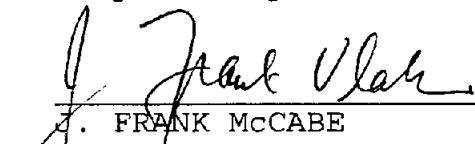
PEOPLE OF THE STATE OF	)	NO. H030682
CALIFORNIA,)	
	)	[Santa Clara County
Plaintiff and	)	Superior Court
Respondent,	)	No. CC 454838]
)	
v.)	
)	
HOWARD ALLEN YOUNG,)	
)	
Defendant and)	
Appellant.)	
)	

CERTIFICATE OF WORD COUNT

Appellant hereby certifies that the software used in preparing the Supplemental Opening Brief for Appellant is Corel WordPerfect 8 and contains approximately 858 words.

DATED: April 16, 2007.

Respectfully submitted,


J. FRANK McCABE
Counsel for Appellant Young
Under the Sixth District Appellate
Program's Independent-Case System

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the City and County of San Francisco, State of California; I am over the age of 18 years and not a party to the within action; my business address is 500 Sansome Street, Suite 212, San Francisco, California 94111. On April 17, 2007, I served the within **SUPPLEMENTAL OPENING BRIEF FOR APPELLANT** on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office Mail Box at San Francisco, California, addressed as follows:

EDMUND G. BROWN, JR.
ATTORNEY GENERAL
STATE OF CALIFORNIA
455 GOLDEN GATE AVE STE 11000
SAN FRANCISCO, CA 94102-7004

DISTRICT ATTORNEY
COUNTY OF SANTA CLARA
70 W HEDDING ST
SAN JOSE CA 95110

WILLIAM M. ROBINSON, ESQ.
SIXTH DISTRICT APPELLATE PROGRAM
100 N WINCHESTER BLVD STE 310
SANTA CLARA CA 95050

HOWARD ALLEN YOUNG
F44590 3A-02/126
P O BOX 3461
CORCORAN CA 93212

CLERK, SUPERIOR COURT
COUNTY OF SANTA CLARA
191 N FIRST ST
SAN JOSE CA 95113
(for delivery to
HON. ANDREA Y. BRYAN)

Executed at San Francisco, California, on April 17,
2007.

Kimberly Cooke
KIMBERLY COOKE

SIXTH DISTRICT APPELLATE PROGRAM

A Non-Profit Corporation

100 N Winchester Blvd., Suite 310
Santa Clara, CA 95050

(408) 241-6171 - Main
(408) 241-2877 - Fax

Executive Director

Michael A. Kresser

Law Office Manager

Yolanda G. Edwards

Assistant Director

Dallas Sacher

~~COPY~~

Staff Attorneys

Lori A. Quick

Vicki I. Firstman

William M. Robinson

Jonathan Grossman

Paul Couenhoven

April 9, 2007

Michael J. Yerly, Clerk
Court of Appeal
Sixth Appellate District
333 W. Santa Clara Street
San Jose, CA 951

Re: People v. Howard Allen Young, H030682
Pro Per Motion and Supplemental Brief

Dear Mr. Yerly:

As a staff attorney with Sixth District Appellate Program (“SDAP”), I recently received from your office an original and four copies of a document prepared *in propria persona* by the appellant in the above-named case, Howard Allen Young, which is entitled “Supplemental Appellant’s Opening Brief and/or Supplemental Writ of Prohibition/Motion for Rehearing or denial of Writ of Prohibition and Motion for Complete Copy of Record” (hereinafter “SAOB”). It is apparent that Mr. Young sent the SAOB to your office for filing, and that your office forwarded it to SDAP based on the fact that Mr. Young is represented by SDAP and by our associated attorney Frank McCabe in this appeal.

My review of the materials submitted by Mr. Young for filing indicates to me that the document includes, in paragraph (1) of the first page, a motion for leave to file a proper supplemental opening brief, together with an explanation of Mr. Young’s stated reasons for filing such a brief. As the motion/SAOB was presented to the court in proper form, with a proof of service, and with the requisite number of copies provided, in my professional opinion the matter should properly be filed by the Court

Michael J. Yerly letter, page 2
April 9, 2007 (People v. Howard Young, H030682)

and submitted for a ruling. I am thus returning the original and four copies of the SAOB to the Court for filing. I have altered the original documents only by separating the original and copies, stapling each separate document, and marking them with the appropriate stamp for "Original" and "Copy."

Thank you for your attention to this matter. Please feel free to telephone me if you have any questions about this matter.

Very truly yours,

William M. Robinson, Staff Attorney

cc: Howard Young, Frank McCabe

FILED

JUL 7 2005

KIRI TORRE
Chief Executive Officer/Clark
Superior Court of CA County of Santa Clara
BY *[Signature]*
DEPUTY

1 Howard Young
2 Dul864
3 885 N. San Pedro St.,
San Jose, Ca., 95110
3 Defendant in Pro Per

4
5 SUPERIOR COURT FOR THE STATE OF CALIFORNIA 8.CHA
6 FOR THE COUNTY OF SANTA CLARA

7 PEOPLE OF THE STATE) No. CC454838
8 OF CALIFORNIA)
9)
10 Plaintiff)
11)
10 v.)
11 Defendant)
11 HOWARD YOUNG)
12 TO THE DISTRICT ATTORNEY OF SANTA CLARA COUNTY
13 AND/OR HIS REPRESENTATIVE:
13 PLEASE TAKE NOTICE that on July 8, 2005, at the hour of 1:00pm
14 Or as soon thereafter as the matter may be heard in the
15 courtroom of the above-entitled court, the defendant will move
16 for an order setting aside the information filed herein.
17 The motion will be made on the grounds that the defendant was
18 committed without reasonable or probable cause, that before the
19 filing of the information the defendant had not been legally
20 committed by a magistrate, and that because the commitment was
21 based upon incompetent evidence.
22 The motion will be based on this notice of motion, on the
23 memorandum of points and authorities as may be filed hereafter
24 with the court, and on such oral argument as may be presented at
25 the hearing on this motion.

26 Dated: July 5, 2005

[Signature]
27 Attorney for Defendant
28 In Pro Per

721

7/22
9:00 AM
FILED
D29A

JUL 7 2005

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY *[Signature]* DEPUTY

1 Howard Young
2 Dul864
3 885 N. San Pedro St.,
San Jose, Ca., 95110
3 Defendant in Pro Per

5 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
6 FOR THE COUNTY OF SANTA CLARA

7 PEOPLE OF THE STATE)
OF CALIFORNIA)
8)
9 Plaintiff)
10 v.)
11 Defendant)
HOWARD YOUNG)

No. CC454838

NOTICE OF MOTION
TO SUPPRESS
EVIDENCE
(Pen. C #1538.5(i))
Date: JULY 8, 2005
Time: 9:00am
2:00 HOURS
Place:DEPT.29

12 TO THE DISTRICT ATTORNEY OF SANTA CLARA COUNTY
AND/OR HIS REPRESENTATIVE:
13 PLEASE TAKE NOTICE that on July 8, 2005, at the hour of 1:00pm
14 Or as soon thereafter as the matter may be heard in the
15 courtroom of the above-entitled court, the defendant will move
16 for an order suppressing the following evidence: the VISA USA
17 SEARCH WARRANT, the TRANSUNION SEARCH WARRANT, the EXPERIAN
18 SEARCH WARRANT, the EQUIFAX SEARCH WARRANT, the T-MOBILE SEARCH
19 WARRANT, the EBAY/PAYPAL SEARCH WARRANT, the SAN FRANCISCO
20 INTERNATIONAL AIRPORT SEARCH WARRANT, the PUBLIC STORAGE SEARCH
21 WARRANT, the HERTZ SEARCH WARRANT, the AVIS SEARCH WARRANT, the
22 AIRLINE REPORTING CORPORATION(ARC) SEARCH WARRANT, the LAS VEGAS
23 SEARCH WARRANT, (or should be disallowed), the SEARCH OF THE
24 DEFENDANT'S IBM LAPTOP SEIZED AT THE DEFENDANT'S ARREST, any and
25 all other searches and seizures made in the above mentioned
26 case, including but not limited to, all the information,
27 documentation, evidence, and property listed on the attached
28 Property Reports seized before, during, and after the

1 defendant's arrest.

2 The motion will be made on the grounds that the search and
3 seizures were unreasonable in violation of the Fourth and
4 Fourteenth amendments to the United States Constitution, and
5 violated the defendant's reasonable expectation of privacy. More
6 specifically, some of these search warrants were facially
7 defective, some of these search warrants were too broad to
8 comport to constitutional standards, and some of these search
9 warrants derived information from illegal search and seizures.
10 Additionally, some of the search warrants were illegal due to
11 federal law/federal regulation. We also note that the LAS VEGAS
12 search and seizure was initially done, as was the VISA USA
13 search and seizure, without a search warrant.

14 The motion will be based on this notice of motion, on the
15 transcript of the preliminary hearing (which to date we have not
16 received) and the memorandum of points and authorities served
17 and filed hereafter, on such supplemental memoranda of points
18 and authorities as may hereafter be filed with the court or
19 stated orally at the conclusion of the hearing on the motion, on
20 all papers and records on file in this present action, and on
21 such oral and documentary evidence as may be presented at the
22 hearing of the motion.

23

24 Dated: July 5, 2005

25

26

27

28



Attorney for Defendant
Defendant In Pro Per

3

704

NO.

(PLEASE NOTE THAT RED INK IS NOT AVAILABLE TO PRO PER INMATES)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

Howard Young,)
Petitioner)
-vs.-)
) (Santa Clara County)
>) Superior Court No. 1454838)
>)
THE SUPERIOR COURT OF CALIFORNIA)
COUNTY OF SANTA CLARA)
Respondent)
PEOPLE OF THE STATE OF CALIFORNIA,)
Real Party in Interest)

RECEIVED

AUG 13 2005

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
DEPUTY

FILED

AUG 12 2005

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
DEPUTY

PETITION FOR WRIT OF PROHIBITION AND REQUEST FOR STAY OF
PROCEEDINGS PRESENTLY SET FOR SEPTEMBER 12, 2005, AND EXHIBITS

IN SUPPORT THEREOF

After Denial of Motion to Set Aside

Pursuant to Penal Code 995

By the Honorable Randolph Rice

Judge of the Superior Court

County of Santa Clara

Howard Young,

#04030028 DUL864

885 N. SAN PEDRO ST.

SAN JOSE, CA. 95110

PETITIONER PROCEEDING IN PRO PER.

1045

1 NO.

2 (PLEASE NOTE THAT RED INK IS NOT AVAILABLE TO PRO PER INMATES)

3 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

4 SIXTH APPELLATE DISTRICT

5 Howard Young,

6 Petitioner

7)

8) (Santa Clara County

9) Superior Court No.: 454838)

10 THE SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12 Respondent

13)

14 PEOPLE OF THE STATE OF CALIFORNIA,

15 Real Party in Interest)

16 PETITION FOR WRIT OF PROHIBITION AND REQUEST FOR STAY OF
17 PROCEEDINGS PRESENTLY SET FOR SEPTEMBER 12, 2005, AND EXHIBITS

18 IN SUPPORT THEREOF

19 After Denial of Motion to Set Aside

20 Pursuant to Penal Code 995

21 By the Honorable Randolph Rice

22 Judge of the Superior Court

23 County of Santa Clara

24 Howard Young,

25 #04030028 DUL864

26 885 N. SAN PEDRO ST.

27 SAN JOSE, CA. 95110

28 PETITIONER PROCEEDING IN PRO PER.

1046

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27		
28		

1 Howard Young
2 04030028-DUL-864
3 885 N. San Pedro str.
4 San Jose, Ca. 95110
5 Defendant In Pro Per

6 No.

7 5 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

8 6 SIXTH APPELLATE DISTRICT

9 7 Howard Young,)
10 8 Petitioner)
11 9) (Santa Clara County
12 10 -vs.-) Superior Court No.: 454838)
13 11)
14 12 THE SUPERIOR COURT OF CALIFORNIA)
15 13 COUNTY OF SANTA CLARA)
16 14 Respondent)
17 15)
18 16 PEOPLE OF THE STATE OF CALIFORNIA,)
19 17 Real Party in Interest)

20 18 PETITION WITH MEMORANDUM OF POINTS AND AUTHORITIES

21 19 TO THE HONORABLE PRESIDING JUSTICE AND TO THE HONORABLE ASSOCIATE
22 20 JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA:

23 21 INTRODUCTION

24 22 Petitioner, Howard Young, respectfully petitions this Court for a
25 23 writ of prohibition and stay of proceedings directed to respondent
26 24 court, and by this verified petition alleges that the petitioner was
27 25 illegally committed, pursuant to a violation of Penal Code 859b, and
28 26 that the petitioner was denied substantial rights at the preliminary
examination.

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1 PETITION
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4 Petitioner is the defendant in the above-entitled action now pending
5 in respondent court. The plaintiff in the above action is named in
6 this petition as the real party in interest.

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II

Petitioner was arraigned on June 9, 2005, on an accusatory pleading
numbered CC454838, alleging violations of Penal Codes 459-460(b),
484-487(a), and 496(a).

A copy of the accusatory pleading will be sent separately to the
Court, made part of this petition, and labeled Exhibit A.

III

On July 22, 2005, in Department 29, of respondent court, the Honorable
Randolf Rice presiding, petitioner moved to set aside the
information, pursuant to Penal Code 995.

The motion was denied. A copy of the motion will be sent separately
to the Court, made part of this petition, and labeled Exhibit B.

A copy of the order of minutes and transcripts of said proceeding was
requested from respondent court. The transcripts have not been
received to date. We have filed a motion requesting these transcripts
and the order of minutes, to be produced. A copy of the preliminary
hearing transcript, as well as a copy of the motion requesting these
transcripts, will be sent separately to the Court, made part of this
petition, and labeled as Exhibit C .

IV

1 Petitioner is particularly aggrieved by respondent court's actions,
2 which will result in irreparable damage to petitioner in that the
3 petitioner will face trial after being illegally committed.

4 V

5 The parties directly affected by the instant proceeding now pending
6 in respondent court are petitioner, by and through counsel;
7 respondent court; and Real Party in interest, the People of the State
8 of California.

9 All the proceedings about which this petition is concerned have
10 occurred within the territorial jurisdiction of the respondent court
11 and of this court.

12 VI

13 No other petition for a writ has been made by, or on behalf of, this
14 petitioner relating to this matter.

15 VII

16 Petitioner has no other plain, speedy, or adequate remedy at law. The
17 sole remedy is by petition for extraordinary writ, pursuant to Penal
18 Code 999a.

19 VIII

20 Respondent court should be restrained from further proceedings for
21 the reasons that: Petitioner was illegally committed by the
22 magistrate and denied substantial right's as follows:

23 VIOLATION OF PENAL CODE 859b

24 On October 14, 2004, Petitioner and Real Party in Interest pled not
25 guilty, entered in a 60 day time waiver, and was scheduled for
preliminary examination on January 5, 2005.

26 On January 5, 2005, Petitioner's Attorney agreed to remove himself
27 from the case. At which time the Santa Clara County Public Defenders
28 Office was assigned.

1 On January 10, 2004, the defendant refused to enter a time waiver, but
2 the court continued the setting of the preliminary examination until
3 January 18, 2005, at which time the defendant filed a Marsden motion
4 to remove the Santa Clara County Public Defenders Office and enter
5 into Pro Per status. Eventually, the defendant's preliminary
6 examination was held on June 2-3, 2005, at which time the defendant
7 entered a time waiver.

8 **DENIAL OF SUBSTANTIAL RIGHT'S**

9 Additionally, we seek review where the defendant was denied his
10 substantial right's at the preliminary examination by not being able
11 to cross-examine People's witnesses.

12 As noted in the preliminary examination transcripts, Exhibit A, on
13 page # 90, lines 13-26, during cross-examination of one of the
14 investigating officers, Det. Flohr, the court denied the defense the
15 right to continue cross-examining the witness, after the defense
16 clearly stating: "I'm not, Your Honor", in response to the courts
17 question of: "Were you through? You weren't through with the witness
18 were you?", and instead turned the proceedings over to the District
19 Attorney Mr. Flattery. We assert that this was prejudicial, and it
20 denied the defense the substantial right to cross-examine the witness
21 any further. We also note that on page #222, lines 25-28, and on page
22 #223, lines 1-10, of the preliminary examination transcripts, that
23 the defense was again denied the substantial right to cross-examine
24 the People's witness, Det. Bouja, who also is an investigating officer
25 in this case. While the defense was cross-examining the witness,
26 Deputy District Attorney Mr. Flattery objected twice. First, by
27 saying "I don't think it could be properly challenged in this
28 jurisdiction", which was sustained. Then, Deputy District Attorney
Mr. Flattery objected by saying "as discovery". Yet, the questioning

1 by the defense was after Deputy District Attorney Mr. Flattery had
2 introduced evidence from the Las Vegas search, and, as noted on page
3 # 183, lines 19-28, and page # 184, lines # 1-15, Det.Bouja had
4 already spoken regarding the Las Vegas search, and the subject which
5 the defense was merely attempting to cross-examine. We assert the it
6 was prejudicial, and it was a denial of the defendant's substantial
7 right's to be denied to cross-examine the witness, Det.Bouja in this
8 area.

9 PERJURY AND SUBORNATION OF PERJURY

10 We assert perjury, pursuant to Penal Code 118, by Det.Bouja whose
11 testimony appears on pages 157-223. On page 205, lines 10-28, page
12 213, lines 11-28, of the preliminary examination transcript, where
13 items # 48, 49, and 50, were introduced into evidence as having been
14 seized at the defendant's Las Vegas residence. We further assert that
15 items # 35, 37, and 45 were also seized from the defendant's bags at the
16 San Francisco International Airport, and not the defendant's Las
17 Vegas residence as testified to by Det.Bouja. We also note that
18 Det.Bouja stated that he had a search warrant when he went to the
19 defendant's house in Las Vegas, on page # 222, lines 14-22, which he
20 did not as noted from the Las Vegas search warrant. We assert that
21 this perjury was procured and instigated by Deputy District Attorney
22 Mr. Flattery during the preliminary examination, which is subornation
23 of perjury, pursuant to Penal Code 127. We assert that Deputy
24 District Attorney Mr. Flattery knew or should have known the truth
25 regarding this evidence, yet chose to instigate and procure this
26 perjured testimony from Det.Bouja

27 We assert perjury, pursuant to Penal Code 118, by Ms.Tannehill Crews
28 on page 125, lines 26-28, and on page 126, lines 8-18, of the
preliminary examination transcript. Ms.Crews claimed to have

1 identified stolen memory modules by serial numbers listed on the
2 defendant's Ebay account, but those Ebay records show that that was a
3 lie, and of which was the root of the investigation of the defendant.
4 All of which we brought to the attention of the court in the Motion
5 to Set Aside, pursuant to Penal Code 995. On July 22, 2005, the
6 Superior Court denied the defendant's motion to Set Aside, pursuant
7 to Penal Code 995. We assert that the respondent court acted in
8 excess of its jurisdiction in denying petitioner's motion to set
9 aside.

10 WHEREFORE, petitioner prays that:

11 This prayer should be deemed notice that Real Party in Interest seeks
12 a peremptory writ of prohibition in the first instance restraining
13 the respondent court, its officers and agents, and all persons acting
14 by and through its orders from taking any further steps or
15 proceedings, including trial, in the above-captioned criminal action
16 against petitioner.

17 Dated: August 4, 2005

18 Respectfully Submitted

19

20

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27

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Howard Young,

Petitioner/Pro Per

1 VERIFICATION
2

3 I am Petitioner representing and proceeding In Pro Per. All
4 facts alleged in the

5 Above documents, not otherwise supported by citations to the record,
6 exhibits, or other

7
8 Documents, are true of my own personal knowledge.

9
10 I declare under penalty of perjury that the foregoing is true
11 and correct and that

12
13 This declaration was signed on August 4, 2005

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18 Howard Young
19 Petitioner/Pro Per.
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MEMORANDUM OF POINTS AND AUTHORITIES

四

VIOLATION OF PENAL CODE 859b

4 Penal Code section 859b, insofar as pertinent provides "Both the
5 defendant and the People have the right to a preliminary examination
6 at the earliest possible time, and unless both waive that right for
7 good cause for a continuance is found is provided for in section
8 1050, the preliminary examination shall be held within 10 days of the
9 date the defendant is arraigned or pleads, whichever occurs later. In
10 no instance shall the preliminary examination be continued beyond 10
11 days from the arraignment or plea whenever the defendant is in
12 custody at the time of such arraignment or plea ant the defendant
13 does not personally waive his right to a preliminary hearing within
such 10 court days."

14 On October 14, 2004, Petitioner and Real Party in Interest pled not
15 guilty, entered in a 60 day time waiver, and was scheduled for
16 preliminary examination on January 5, 2005.

17 On January 5, 2005, Petitioner's Attorney agreed to remove himself
18 from the case. At which time the Santa Clara County Public Defenders
19 Office was assigned.

20 On January 10, 2004, the defendant refused to enter a time waiver, but
21 the court continued the setting of the preliminary examination until
22 January 18, 2005, at which time the defendant filed a Marsden motion
23 to remove the Santa Clara County Public Defenders Office and enter
24 into Pro Per status. Eventually, the defendant's preliminary
25 examination was held on June 2-3, 2005, at which time the defendant
26 entered a time waiver. We assert that this violated the defendant's
27 right to a preliminary examination within 10 days of the defendant
28 pleading not guilty, within the meaning of Penal Code 859b. The

1 defendant did not enter a time waiver after the scheduled preliminary
2 examination date of January 5, 2005, hence making the defendant's
3 commitment illegal. The court held in *Serrato v Superior Court*
4 (1978) 76 Cal.App.3d 459, 469-470, 142 Cal.Rptr.882, 887, and in *Irving*
5 v *People*(1979) 93 Cal.App.3d 596, 155 Cal.Rptr.654 that: "An accused is
6 not legally committed within the ambit of section 995 if the
7 magistrate denies him the right to have his preliminary examination
8 held within the mandatory time limit prescribed by section 859b and
9 can obtain relief under section 995."

10 II

11 DENIAL OF SUBSTANTIAL RIGHT'S

12 Additionally, we seek review where the defendant was denied his
13 substantial right's at the preliminary examination by not being able
14 to cross-examine People's witnesses.

15 As noted in the preliminary examination transcripts, Exhibit A, on
16 page # 90, lines 13-26, during cross-examination of one of the
17 investigating officers, Det.Flohr, the court denied the defense the
18 right to continue cross-examining the witness, after the defense
19 clearly stating: " I'm not, Your Honor", in response to the courts
20 question of: "Were you through? You weren't through with the witness
21 were you?", and instead turned the proceedings over to the District
22 Attorney Mr. Flattery. We assert that this was prejudicial, and it
23 denied the defense the substantial right to cross-examine the witness
24 any further. We also note that on page #222, lines 25-28, and on page
25 #223, lines 1-10, of the preliminary examination transcripts, that
26 the defense was again denied the substantial right to cross-examine
27 the People's witness, Det.Bouja, who also is an investigating officer
28 in this case. While the defense was cross-examining the witness,
Deputy District Attorney Mr. Flattery objected twice. First, by

1 saying "I don't think it could be properly challenged in this
 2 jurisdiction", which was sustained. Then, Deputy District Attorney
 3 Mr. Flattery objected by saying "as discovery". Yet, the questioning
 4 by the defense was after Deputy District Attorney Mr. Flattery had
 5 introduced evidence from the Las Vegas search, and, as noted on page
 6 # 183, lines 19-28, and page # 184, lines # 1-15, Det.Bouja had
 7 already spoken regarding the Las Vegas search, and the subject which
 8 the defense was merely attempting to cross-examine. We assert the it
 9 was prejudicial, and it was a denial of the defendant's substantial
 10 right's to be denied to cross-examine the witness, Det.Bouja in this
 11 area. The court in *Jennings v Superior Court*
 12 (1967) 66 Cal.2d 867,428 P.2d 304,59 Cal.Rptr.440 , held that "Where
 13 it appears that, during course of preliminary examination, defendant
 14 has been denied substantial right, commitment is unlawful and must be
 15 set aside upon timely motion. West's Ann.Pen.Code # 995."
 16 The court held in *Alford v Superior Court* (1972) 29 Cal.App.3d
 17 724,105 Cal.Rptr.713, that, as in *Alford v United States*,282
 18 U.S.687,691-692,51 S.Ct.218,219,75 L.Ed.624, that " It is the essence
 19 of a fair trial that reasonable latitude be given the cross-examiner,
 20 even though he is unable to state to the court what facts a
 21 reasonable cross-examination might develop. Prejudice ensues from a
 22 denial of the opportunity to place the witness in his proper setting
 23 and put the weight of his testimony and his credibility to a test,
 24 without which the jury cannot fairly appraise them. To say that
 25 prejudice can be established only by showing that the cross-
 26 examination, if pursued, would necessarily have brought out facts
 27 tending to discredit the testimony in chief, is to deny a substantial
 28 right and withdraw one of the safeguards essential to a fair trial.

1 (Alford v United States, 282 U.S at p.692, 51 S.Ct. at p.219.) Alford
2 dealt with cross-examination at trial. We see no reason, however, why
3 the same principles should not apply at preliminary hearings since
4 the defendant is entitled to present evidence at such hearing to
5 establish that there is no probable cause to hold him for trial.
6 The court in Hines v Superior Court (1988) Cal.App.3d 1231, 251
7 Cal.Rptr.28, held that: "once statutory privilege was invoked, thus
8 depriving the defendant of right to cross-examine officer on material
9 issue, magistrate should have stricken testimony..." We make this
10 analogy to our case by stating where magistrate deprived the
11 defendant of right to cross-examine officer on material issue, to
12 wit, the Las Vegas search, particularly after the People questioned
13 the officer and introduced evidence said to have been seized from the
14 Las Vegas search, then the magistrate should have stricken
15 Det.Bouja's testimony. Otherwise, we assert this was prejudicial and
16 denied the defendant his substantial right to cross-examine these
witnesses.

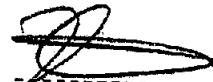
111

PERJURY AND SUBORNATION OF PERJURY

19 We assert perjury, pursuant to Penal Code 118, by Det.Bouja whose
20 testimony appears on pages 157-223. On page 205, lines 10-28, page
21 213, lines 11-28, of the preliminary examination transcript, where
22 items#, 48, 49, and 50, were introduced into evidence as having been
23 seized at the defendant's Las Vegas residence. We further assert that
24 items# 35, 37, and 45 were also seized from the defendant's bags at the
25 San Francisco International Airport, and not the defendant's Las
26 Vegas residence as testified to by Det.Bouja. We also note that
27 Det.Bouja stated that he had a search warrant when he went to the
28 defendant's house in Las Vegas, on page # 222, lines 14-22, which he

1 did not as noted from the Las Vegas search warrant. We assert that
2 this perjury was procured and instigated by Deputy District Attorney
3 Mr. Flattery during the preliminary examination, which is subornation
4 of perjury, pursuant to Penal Code 127. We assert that Deputy
5 District Attorney Mr. Flattery knew or should have known the truth
6 regarding this evidence, yet chose to instigate and procure this
7 perjured testimony from Det. Bouja
8 We assert perjury, pursuant to Penal Code 118, by Ms. Tannehill Crews
9 on page 125, lines 26-28, and on page 126, lines 8-18, of the
10 preliminary examination transcript. Ms. Crews claimed to have
11 identified stolen memory modules by serial numbers listed on the
12 defendant's Ebay account, but those Ebay records show that that was a
13 lie, and of which was at the root of the investigation of the
14 defendant.

15 Dated: August 4, 2005
16 Respectfully Submitted
17



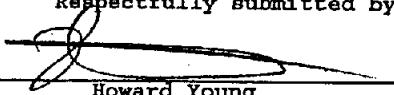
Howard Young,
Petitioner/Pro Per

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1060

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3 Date: July 26, 2005
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Respectfully submitted by,


Howard Young

10 Defendant in Pro Per
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FILED

JUL 27 2005

KIRI TORRE
Chief Executive Officer
Superior Court of CA County of Santa Clara
By *[Signature]* DEPUTY
NICK RESZ

1 Howard Young
2 885 N. San Pedro str.
3 San Jose, Ca. 95110
4 04030028 DUL 864
5 Defendant in Pro Per

6 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

7 FOR THE COUNTY OF SANTA CLARA

8 PEOPLE OF THE STATE
9 OF CALIFORNIA,

10 Plaintiff,

11 POINTS AND AUTHORITIES
12 IN SUPPORT OF MOTION
13 TO REDUCE BAIL

14 V.
15 Defendant
16 HOWARD YOUNG

17 Date: July 29, 2005
18 Time: 1:30 pm
19 Place: Dept. 29

20 Defendant submits the following points and authorities in
21 support of the motion to reduce bail:

22

23 I

24 A COURT MAY NOT CONSTITUTIONALLY REQUIRE A
25 DEFENDANT TO POST EXCESSIVE BAIL

26 The right to bail is contained in California Constitution
27 Article I, section 12, which provides in part:

28 "A person shall be released on bail by sufficient sureties,
29 for capital crimes when the facts are evident or the
30 presumption great. Excessive bail may be required."

31

32 II.

33 DUE PROCESS REQUIRES THE BURDEN OF PROOF
34 CONCERNING THE DEFENDANT'S REAPPEARANCE
35 TO BE BORNE BY THE PROSECUTION

36 In *Van Atta v. Scott* (1980) 27 cal 3d 424, 444, 166 Cal Rptr
37 149, 613 P2d 210, the California Supreme Court examined the due
38 process procedural requirements related to the burden of

1 presenting proof of the likelihood of a defendant's appearance
2 in court. The court stated:

3 "Accordingly, it is concluded that due process requires
4 the burden of proof concerning the defendant's likelihood
5 of appearing for future court proceedings to be borne by
6 the prosecution at the O.R. hearing."

7 III.

8 DEFENDANT'S FUNDAMENTAL LIBERTY INTEREST
9 MANDATES DUE PROCESS RIGHTS TO A HEARING INCLUDING THE
RIGHT TO CROSS-EXAMINE WITNESSES

10 The deprivation of a defendant's liberty can be
11 accomplished only if the state observes basic due process
12 requirements. A defendant deprived of liberty is deprived of a
13 fundamental interest 'second only to life itself in terms of
14 constitutional importance.' Such deprivation can result after
15 the defendant has been accorded due process rights. (Van Atta v.
16 Scott (1980) 27 Cal. 3d 424, 435, 166 Cal. Rptr. 149, 613 P.2d
210; Morrissey v. Brewer 408 U.S. 471, 33 Ill. Ed. 2d 484, 92 S.Ct.
2593

17 The extent of due process rights guaranteed by the state and
18 Federal constitution depends on the balancing of four factors:
19 (1) the private interest affected; (2) the risk of an erroneous
deprivation of that interest; (3) the value of additional
20 safeguards; and (4) the governmental burden in according the due
21 process rights to the individual. (Mathews v. Elderidge (1976)
424 U.S. 319, 335, 47 L.Ed.2d 18, 96 S.Ct. 893; Van Atta v. Scott
22 27 Cal. 3d 424, 166 Cal. Rptr. 148, 613 P.2d 210; People v. Ramirez
23 (1979) 25 Cal. 3d 260, 269, 158 Cal. Rptr. 316.599 P.2d 622.)

24 A. THE RISK OF AN ERRONEOUS DEPRIVATION OF LIBERTY IS
25 EXTREMELY HIGH WHEN BASED ON A PREDICTION OF FUTURE
26 BEHAVIOR

27 As the California Supreme court clearly states in Van Atta
28 v. Scott (1980) 27 Cal. 3d 260, 269, 158 Cal. Rptr. P.2d 210.
"...[T]he threat of an unwarranted restraint on an
individual's liberty is its greatest when the decision
being made is predictive in nature."

In numerous opinions, the California Supreme court has
declared to be unreliable and unreliable and frequently
erroneous expert predictions that persons will engage in

1 future violent conduct. (People v. Burnick (1975) 14 Cal 3
2 306, 326-327, 121 Cal Rptr 488, 535 P2d 352; Conservateon
3 of Roulet (1979) 23 Cal 3d 219, 234-235, 152 Cal Rptr
4 425, 590 P2d 1; People v. Murtishaw (1981) 29 Cal. 3d 733,
5 767-775, 175 Cal Rptr 738, 631 P2d 446).

4 B. IN ORDER TO PROTECT AGAINST THIS RISK, DUE
5 PROCESS REQUIRES, AT A MINIMUM, THE RIGHT TO CONFRONT AND
6 CROSS-EXAMINE WITNESSES

7 The United Supreme in *Goldberg v. Kelly* (1970) 397 U.S.
8 254, 269, 25 L Ed. 2d 287, 90 S Ct. 1011, emphasized the
9 importance of cross examine in determining the truth or
10 falsity of factual allegations:

11 "In almost every setting where important decisions turn
12 on questions of facts, due process requires an opportunity
13 to confront and cross-examine the witness."

14 The due process rights of a defendant facing trial are
15 certainly no less than those of defendants who face a
16 parole or probation revocation.

17 A defendant who has not been convicted of any crime has
18 at least the due process rights of those convicted persons
19 facing parole or probation revocation. (*Morrissey v. Brewer*
20 (1972) 408 U.S. 471, 33 L Ed. 2d 484, 92 S Ct. 2593; *Gagnon v.*
21 *Scopelli* U.S. 778, 36 L Ed. 2d 656, (3 S Ct. 1756, 71 Ohio
22 Ops 2d 279.)

23 VI.

24 ARTICLE I, SECTION 12 OF THE CALIFORNIA CONSTITUTION
25 DOES NOT AUTHORIZE THE SETTING OF BAIL ON THE
26 BASIS OF PERCEIVED VIOLENCE

27 Nowhere does the constitution allow the court to take into
28 account general consideration of public safety in setting bail.
29 There is no implied" public safety exception to a defendant's
30 guarantee to the right to bail. (*Re Underwood* (1973) 9 Cal 3d
31 345, 107 Cal Rptr 401, 508 P2d 721.)

32 In determining the amount of bail, the court is limited to
33 considering" the seriousness of the offense charged, the
34 previous criminal record of the defendant, and the probabilities
35 of his or her appearing at the trial or hearing of the case."

1 (Cal Const, Art I, section 12). Based on these considerations,
2 the amount of the court is unreasonable.

3 Further defendant ask the court to take judicial notice
4 that he has in countered numerous infringements and or
5 violations of his rights to proceed as pro per that have
6 prejudiced him. Defendant's ability to adequately and properly
7 prepare his case will be impossible if not released from
8 custody. For example the inadequate law library provided for pro
9 per inmates is through a paging system that does not meet
10 constitutional muster. Defendants work product privilege is
11 violated because any other person having access to the pro per
12 word processor may copy or expose to anyone another inmate's
13 information. Pro per inmates may not conduct confidential
14 interviews with witnesses whether they are in custody or out of
15 custody. Defendants pro per phone is ran through the EVERCOM
16 phone system that can also be monitored. Also, it doesn't allow
17 you to call private parties or business that have automated
18 answering services. The pro per phone will not call long
19 distance calls unless there has been a account set up by the
20 Defendant through EVERCOM, for pre-paid long distance calling.

21 FOR THE FORGOING REASONS defendant here by request that his
22 Bail be reduces from \$5,000,000 to \$250,000 or that he be
23 released on his own recognizance.

24 Dated:

Respectfully submitted by,



25
26 Defendant In Pro Per
27
28

1 Howard Young
2 885 N. San Pedro str.
3 San Jose, Ca. 95110
4 D4030028 DUL 864
5 Defendant in Pro Per

6
7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SANTA CLARA
9
10 PEOPLE OF THE STATE
11 OF CALIFORNIA, Plaintiff, No. CC454838
12 Plaintiff, NOTICE OF MOTION
13 Plaintiff, TO REDUCE BAIL

14 v. Defendant Date: July 29, 2005
15 HOWARD YOUNG Defendant Time: 1:30 pm
16 Place:Dept.29

17 TO THE DISTRICT ATTORNEY OF SANTA CLARA COUNTY
18 AND/OR HIS REPRESENTATIVE:
19 PLEASE TAKE NOTICE that on July 29, 2005, at the hour of 9:30 am
20 Or as soon after as the matter can be heard in the courtroom of
21 Department 29 of the above-entitled court, the defendant will
22 move for an order reducing the amount of bail hereto set in the
23 above-captioned action from \$5,000,000 to \$250,000.

24 The motion will be made, on the grounds, that the bail set is
25 excessive within the meaning of the Eighth Amendment to the
26 United States Constitution and of Article I, section 12 of the
27 California Constitution.

28 The motion will be based on this notice of motion, on the
29 attached declaration; the memorandum of points and authorities
30 served and on such oral and documentary evidence as may be
31 presented at the hearing of the motion.

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7 EXHIBIT
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GENERAL DOCKET FOR
Ninth Circuit Court of Appeals

Court of Appeals Docket #: 06-16051
Vsuit: 3550 Prisoner civil rights (Fed)
Young v. Trans Union, et al
Appeal from: Northern District of California (San Francisco)

Filed: 6/13/06

Case type information:

- 1) prisoner petition
- 2) state
- 3) Civil rights

Lower court information:

District: 0971-3 : CV-06-00114-MJJ
presiding judge: Martin J. Jenkins, District Judge
Date Filed: 1/10/06
Date order/judgment: 5/25/06
Date NOA filed: 5/31/06

Fee status: partially paid

Prior cases:

None

Current cases:

None

Panel Assignment:

Panel: EL SRT MSB : **/**/*
Date of decision: **/**/*

Proceedings include all events.
06-16051 Young v. Trans Union, et al

HOWARD YOUNG
Plaintiff - Appellant

Howard Young
F-44590
[NTC prs]
COSP - 3A CORCORAN STATE PRISON
Level 3A Facility
P.O. Box 3461
Corcoran, CA 93212-3461

v.

TRANS UNION
Defendant - Appellee

No appearance
No appearance

XPERIAN
Defendant - Appellee

No appearance
(See above)

QUIFAX
Defendant - Appellee

No appearance
(See above)

ISA USA
Defendant - Appellee

No appearance
(See above)

Proceedings include all events.
06-16051 Young v. Trans Union, et al

HOWARD YOUNG

Plaintiff - Appellant

v.

TRANS UNION; EXPERIAN; EQUIFAX; VISA USA

Defendants - Appellees

Proceedings include all events.
06-16051 Young v. Trans Union, et al

6/13/06 DOCKETED CAUSE AND ENTERED APPEARANCES OF APLT IN PRO PER AND NO APPR FOR APLES. CADS SENT (Y/N): NO. setting schedule as follows: Fee payment is due 6/27/06 ; appellant's opening brief is due 7/24/06; [06-16051] (ji)

5/13/06 Filed certificate of record on appeal RT filed in DC none stated. [06-16051] (ji)

5/19/06 Received Appellant Howard Young's motion to expedite appeal and to grant preliminary injunction; served on [no appr for aples] (MOATT) [06-16051] (ji)

7/5/06 Filed order (Deputy Clerk: jw) A review of the district court docket reflects that aplt has not paid the docketing and filing fees for this appeal. Within 21 days from the date of entry of this order, aplt shall: (1) file a motion with this court to proceed in forma pauperis; (2) pay \$455.00 to the district court as the docketing and filing fees for this appeal and provide proof of payment to this court; or (3) otherwise show cause why the appeal should not be dismissed for failure to prosecute. If aplt fails to comply with this order, the appeal will be dismissed automatically by the Clerk under Ninth Cir. R. 42-1. [06-16051] (bb)

7/14/06 Received copy of District Court order filed on 6/27/06 Motion to proceed in forma pauperis granted. (PROSE) [06-16051] (bb)

7/20/06 Received letter from pro se re: ifp status. (PROSE) (bb)

7/26/06 Filed order MOATT (NMG) The district court has granted aplt leave to proceed in forma pauperis on appeal....Accordingly, within 21 days after the filing date of this order, aplt shall complete and file with this court the enclosed authorization form....If aplt fails to comply with this order, the Clerk shall dismiss this appeal for failure to prosecute....CITE. The court has reviewed aplt's motion to appeal and related motions, filed herein on 6/7/06. The court construes these motions as aplts opening brf. The Clerk shall file the motions as aplt's opening brf. This appeal is ready for calendaring. [06-16051] (bb)

7/26/06 Filed (per 7/26/06 order) original and 7 copies Appellant Howard Young's motion construed as an opening brief (Informal: yes) 4 pages; no service; [06-16051] (bb)

8/3/06 Rec'd PLRA authorization response from appellant. (MOATT) (Date: 8/1/06) [06-16051] (bb)

8/3/06 Filed Appellant Howard Young's motion to appoint counsel of record. no service (MOATT) [5911727] [06-16051] (bb)

Proceedings include all events.
06-16051 Young v. Trans Union, et al.

8/3/06 Filed Appellant Howard Young's motion titled: "Motion for temporary/permanent restraining order and/or injunctive relief." no service. (MOATT) [5911759] [06-16051] (bb)

8/15/06 CLERK ORDER FILED (Deputy Clerk: NG) Prisoner fee authorization order sent to CA Atty. Gen. [06-16051] (bb)

9/21/06 Filed order (A. W. TASHIMA, Susan P. GRABER,): Aplts motion for appt of counsel is denied because this appeal does not present "exceptional circumstances" warranting the appt of counsel....CITE. [5911727-1] No motions for reconsideration, clarification, or modification of this denial shall be filed or entertained. Aplts motion for injunctive relief is denied. [5911759-1] This appeal is ready for calendaring. [06-16051] (bb)

10/26/06 No appellee's brief will be filed in this case. Case ready for inventory. [06-16051] record on appeal due 10/3/06; (bb)

10/27/06 Rec'd notice of change of address from Howard Young for Appellant Howard Young dated 9/24/06. [06-16051] (bb)

10/12/06 Rec'd notice of change of address from Appellant Howard Young dated 10/7/06. [06-16051] (bb)

10/31/06 Calendar check performed [06-16051] (th)

11/13/06 Rec'd notice of change of address Appellant Howard Young dated 11/9/06. [06-16051] (bb)

11/30/06 FILED CERTIFIED RECORD ON APPEAL: 1 CLERK'S RECORD & 2 EXPANDO FILES OF BULKY DOCUMENTS. [06-16051] (sd)

12/13/06 Filed Appellant Howard Young's request for a "prehearing settlement conference and/or appeal case management conference" (MOATT) [06-16051] (No proof of svc req'd - no appte appearance) [06-16051] (mhf)

12/28/06 Filed Appellant Howard Young's motion to to appear and argue merits of the case. no service (MOATT) [6054269] [06-16051] (bb)

1/11/07 Rec'd errata to brief from Appellant Howard Young; (RECORDS) (bb)

1/11/07 Filed Appellant Howard Young's motion for complete copy of record [06-16051] served on [PROMO] [06-16051] (mhf)

1/19/07 Received Appellant Howard Young letter dated 3/9/07 re: status of his appeal (Sent public dkt to aplt pro se) [06-16051] (mhf)

1/5/07 Filed Appellant Howard Young's motion for summary reversal (no service) (MOATT) [6142508] [06-16051] (bb)

Proceedings include all events.
06-16051 Young v. Trans Union, et al

6/6/07 Received letter from pro se re: all legal documents taken and aplt is unable to continue to litigate this appeal. (MOATT) (bb) *A*

6/25/07 Received letter from pro se re: Case Status. (sent public dkt rpt) (bb)

7/5/07 Received letter from pro se re: bringing "exceptional circumstances to the Court's attention" (STAFF) (bb)

7/9/07 SUBMITTED TO SCREENING PANEL 456. (Oral) [06-16051] [06-16051] (th)

7/16/07 FILED MEMORANDUM DISPOSITION: AFFIRMED IN PART, REVERSED AND REMANDED IN PART. (Terminated on the Merits after Submission Without Oral Hearing; Affirmed (in part), Reversed (in part) and Remanded (in part); Written, Unsigned, Unpublished. Edward LEAVY, Sidney R. THOMAS, Marsha S. BERZON) FILED AND ENTERED JUDGMENT. [06-16051] (bb)

7/26/07 ✓ Filed original and 50 copies Appellant Howard Young petition for panel rehearing and petition for rehearing en banc; 2 p.pages, served on 7/22/07 (STAFF) [06-16051] (mhf)

7/26/07 Received Howard Young's request for publication of memorandum disposition (Timely); served on 7/22/07 (to STAFF) [06-16051] (mhf)

7/30/07 Received Appellant Howard Young bill of costs. Not served; no entry of costs. Sent deficiency letter to aplt [06-16051] (gar)

7/1/07 Received letter from pro se re: request for dkt sheet. Sent to aplt (gar)

Notc -
Mandate will
not issue
until 7 days
from per
denial.

APPEAL, CLOSED, ProSe

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:06-cv-00114-MJJ
Internal Use Only

Young v. Trans Union et al
Assigned to: Hon. Martin J. Jenkins
Case in other court: 06-16051
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 01/10/2006
Date Terminated: 05/25/2006
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff**Howard Young**

represented by **Howard Young**
California State Prison
Prisoner Id F-44590
P.O. Box 3461
Corcoran, CA 93212
PRO SE

V.

Defendant**Trans Union****Defendant****Experian****Defendant****Equifax****Defendant****Visa USA**

Date Filed	#	Docket Text
01/10/2006	01	COMPLAINT (no process) against Trans Union, Experian, Equifax, Visa USA (Filing fee: IFPP). Filed by Howard Young. (slh, COURT STAFF) (Filed on 1/10/2006) (Entered: 01/11/2006)
01/10/2006	02	EXHIBITS re [1] Complaint filed by Howard Young. (Related document(s)[1]) (slh, COURT STAFF) (Filed on 1/10/2006) (Entered: 01/11/2006)
01/10/2006	03	CLERK'S NOTICE re completion of In Forma Pauperis affidavit or payment of filing fee due within 30 days. (slh, COURT STAFF) (Filed

		on 1/10/2006) (Entered: 01/11/2006)
01/18/2006	❸4	Prisoner Trust Fund Account Statement by Howard Young. (slh, COURT STAFF) (Filed on 1/18/2006) (Entered: 01/18/2006)
01/19/2006	❸5	AMENDED COMPLAINT against Trans Union, Experian, Equifax, Visa USA. Filed by Howard Young. (slh, COURT STAFF) (Filed on 1/19/2006) (Entered: 01/23/2006)
01/19/2006	❸6	MOTION for Leave to Proceed in forma pauperis filed by Howard Young. (slh, COURT STAFF) (Filed on 1/19/2006) (Entered: 01/23/2006)
01/26/2006	❸7	Prisoner Trust Fund Account Statement by Howard Young. (slh, COURT STAFF) (Filed on 1/26/2006) (Entered: 01/30/2006)
01/30/2006	❸	Filing fee received: \$ 250; receipt number 3380967. (slh, COURT STAFF) (Filed on 1/30/2006) (Entered: 01/30/2006)
01/30/2006	❸8	Letter dated 1/20/06 from Howard Young. (slh, COURT STAFF) (Filed on 1/30/2006) (Entered: 02/06/2006)
03/02/2006	❸9	EXHIBIT (transcript) filed by Howard Young. (slh, COURT STAFF) (Filed on 3/2/2006) (Entered: 03/03/2006)
03/07/2006	❸10	Letter from Howard Young requesting service of process. (slh, COURT STAFF) (Filed on 3/7/2006) (Entered: 03/08/2006)
03/07/2006	❸11	MOTION for Temporary Restraining Order filed by Howard Young. (slh, COURT STAFF) (Filed on 3/7/2006) (Entered: 03/08/2006)
03/15/2006	❸12	MOTION for Temporary Restraining Order, MOTION to Appoint Counsel filed by Howard Young. (slh, COURT STAFF) (Filed on 3/15/2006) (Entered: 03/21/2006)
03/17/2006	❸13	MOTION for Discovery filed by Howard Young. (slh, COURT STAFF) (Filed on 3/17/2006) (Entered: 03/22/2006)
03/20/2006	❸15	Letter dated 3/16/06 from Howard Young requesting to have summons issued. (slh, COURT STAFF) (Filed on 3/20/2006) (Entered: 04/03/2006)
03/21/2006	❸14	Letter re: Exhibits 19 filed by Howard Young. (slh, COURT STAFF) (Filed on 3/21/2006) (Entered: 03/22/2006)
04/25/2006	❸16	MOTION for Summary Judgment filed by Howard Young. (slh, COURT STAFF) (Filed on 4/25/2006) (Entered: 04/27/2006)
04/28/2006	❸17	MOTION to Appoint Counsel filed by Howard Young. (slh, COURT STAFF) (Filed on 4/28/2006) (Entered: 05/03/2006)
05/23/2006	❸18	MOTION for Summary Judgment filed by Howard Young. (ys, COURT STAFF) (Filed on 5/23/2006) (Entered: 05/25/2006)
05/25/2006	❸19	ORDER OF DISMISSAL by Judge Martin J. Jenkins DENYING the Motions for a TRO or a preliminary Injunction [11] [12]; dismissing case

		without prejudice; DENYING [6] Motion to Proceed In Forma Pauperis and no filing fee is due. (slh, COURT STAFF) (Filed on 5/25/2006) (Entered: 06/01/2006)
05/25/2006	②20	JUDGMENT that this case is dismissed. (slh, COURT STAFF) (Filed on 5/25/2006) (Entered: 06/01/2006)
05/31/2006	②21	NOTICE OF APPEAL as to [19] Order Dismissing Case, by Howard Young. Filing fee: not paid. (slh, COURT STAFF) (Filed on 5/31/2006) usca # 06-16051 (Entered: 06/02/2006)
05/31/2006	②	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals. (slh, COURT STAFF) (Filed on 5/31/2006) (Entered: 06/02/2006)
05/31/2006	②	Copy of Notice of Appeal and Docket sheet mailed to all counsel. (slh, COURT STAFF) (Filed on 5/31/2006) (Entered: 06/02/2006)
05/31/2006	②	Certificate of Record Mailed to USCA re appeal [21] Notice of Appeal. (slh, COURT STAFF) (Filed on 5/31/2006) (Entered: 06/02/2006)
06/15/2006	②	USCA Case Number 06-16051 for [21] Notice of Appeal. (slh, COURT STAFF) (Filed on 6/15/2006) (Entered: 06/20/2006)
06/22/2006	②22	MOTION for Leave to Proceed in forma pauperis on Appeal filed by Howard Young. (ys, COURT STAFF) (Filed on 6/22/2006) (Entered: 06/27/2006)
06/27/2006	②23	ORDER by Judge Martin J. Jenkins GRANTING [22] Motion for Leave to Proceed in forma pauperis on appeal. cc: USCA. (slh, COURT STAFF) (Filed on 6/27/2006) (Entered: 07/06/2006)
08/16/2006	②24	ORDER of USCA granting appellant's motion to proceed in forma pauperis as to [21] Notice of Appeal. (cc: USDC financial unit). (slh, COURT STAFF) (Filed on 8/16/2006) (Entered: 08/21/2006)
11/29/2006	②	Record on Appeal Certified and Transmitted to US Court of Appeals re [21] Notice of Appeal. (slh, COURT STAFF) (Filed on 11/29/2006) (Entered: 11/29/2006)
12/26/2006	②25	NOTICE of Change of Address and REQUEST for copies of documents filed by Howard Young. (slh, COURT STAFF) (Filed on 12/26/2006) (Entered: 12/28/2006)
01/03/2007	②26	Receipt for Appeal Record re appeal [21] Notice of Appeal. (slh, COURT STAFF) (Filed on 1/3/2007) (Entered: 01/04/2007)
04/26/2007	②27	MOTION to Amend Complaint, MOTION for Discovery filed by Howard Young. (slh, COURT STAFF) (Filed on 4/26/2007) (Entered: 04/27/2007)

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, _____, declare:

I am over 18 years of age and a party to this action. I am a resident of Corcoran State Prison
^{Not}

Prison,
in the county of Kings

State of California. My prison address is: P.O. Box 8800
Corcoran, CA. 93212-8800

On July 7, 2008
(DATE)

I served the attached: Federal HABEAS CORPUS
Mr. Howard Young v. Derek Adams - Warden Corcoran State Prison
(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Edmund G. Brown
California Attorney General's Office
455 Golden Gate Ave. Suite 11000
SAN FRANCISCO, CA. 94102-7004

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2008
(DATE) _____
(DECLARANT'S SIGNATURE)